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IDAHO CODE

CONTAINING THE

GENERAL LAWS OF IDAHO ANNOTATED

ORIGINALLY PUBLISHED BY AUTHORITY OF
LAWS 1947, CHAPTER 224

REPUBLISHED BY AUTHORITY OF
LAWS 1949, CHAPTER 167 AS AMENDED

Compiled Under the Supervision of the
Idaho Code Commission

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TITLES 55-57

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ISBN 978-0-7698-4693-4

PUBLISHER'S NOTE

Since the publications of Replacement Title 55 in 2007 and Replacement Titles 56 to 58 in 2002, many laws have been amended or repealed and many new laws have been enacted. The resulting increase in the size of the cumulative supplement for the former volume has made it necessary to revise this volume. Accordingly, this new volume with Replacement Titles 55 to 57 is issued with the approval and under the direction of the Idaho Code Commission.

This publication contains annotations taken from decisions of the Idaho Supreme Court and the Court of Appeals and the appropriate federal courts. These cases will be printed in the following reports:

Idaho Reports
Pacific Reporter
Federal Supplement
Federal Reporter
United States Supreme Court Reports, Lawyers' Edition

Following is an explanation of the abbreviations of the Court Rules used throughout the Idaho Code.

I.R.C.P.	Idaho Rules of Civil Procedure
I.R.E.	Idaho Rules of Evidence
I.C.R.	Idaho Criminal Rules
M.C.R.	Misdemeanor Criminal Rules
I.I.R.	Idaho Infraction Rules
I.J.R.	Idaho Juvenile Rules
I.C.A.R.	Idaho Court Administrative Rules
I.A.R.	Idaho Appellate Rules

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USER'S GUIDE

To assist the legal profession and the layperson in obtaining the maximum benefit from the Idaho Code, a User's Guide has been included in the first volume of this set.

ADJOURNMENT DATES OF SESSIONS OF LEGISLATURE

Article 3, § 22 of the Idaho State Constitution provides: "No act shall take effect until sixty days from the end of the session at which the same shall have been passed, except in case of emergency, which emergency shall be declared in the preamble or in the body of the law."

Section 67-510 Idaho Code provides: "No act shall take effect until July 1 of the year of the regular session or sixty (60) days from the end of the session at which the same shall have been passed, whichever date occurs last, except in case of emergency, which emergency shall be declared in the preamble or body of the law."

Every joint resolution, unless a different time is prescribed therein, takes effect from its passage."

This table is given in order that the effective date of acts, not carrying an emergency or which do not specify an effective date, may be determined with a minimum of delay.

Year	Adjournment Date
1921	March 5, 1921
1923	March 9, 1923
1925	March 5, 1925
1927	March 3, 1927
1929	March 7, 1929
1931	March 5, 1931
1931 (E.S.)	March 13, 1931
1933	March 1, 1933
1933 (E.S.)	June 22, 1933
1935	March 8, 1935
1935 (1st E.S.)	March 20, 1935
1935 (2nd E.S.)	July 10, 1935
1935 (3rd E.S.)	July 31, 1936
1937	March 6, 1937
1937 (E.S.)	November 30, 1938
1939	March 2, 1939
1941	March 8, 1941
1943	February 28, 1943
1944 (1st E.S.)	March 1, 1944
1944 (2nd E.S.)	March 4, 1944
1945	March 9, 1945
1946 (1st E.S.)	March 7, 1946
1947	March 7, 1947
1949	March 4, 1949
1950 (E.S.)	February 25, 1950
1951	March 12, 1951
1952 (E.S.)	January 16, 1952

1953	March 6, 1953
1955	March 5, 1955
1957	March 16, 1957
1959	March 9, 1959
1961	March 2, 1961
1961 (1st E.S.)	August 4, 1961
1963	March 19, 1963
1964 (E.S.)	August 1, 1964
1965	March 18, 1965
1965 (1st E.S.)	March 25, 1965
1966 (2nd E.S.)	March 5, 1966
1966 (3rd E.S.)	March 17, 1966
1967	March 31, 1967
1967 (1st E.S.)	June 23, 1967
1968 (2nd E.S.)	February 9, 1968
1969	March 27, 1969
1970	March 7, 1970
1971	March 19, 1971
1971 (E.S.)	April 8, 1971
1972	March 25, 1972
1973	March 13, 1973
1974	March 30, 1974
1975	March 22, 1975
1976	March 19, 1976
1977	March 21, 1977
1978	March 18, 1978
1979	March 26, 1979
1980	March 31, 1980
1981	March 27, 1981
1981 (E.S.)	July 21, 1981
1982	March 24, 1982
1983	April 14, 1983
1983 (E.S.)	May 11, 1983
1984	March 31, 1984
1985	March 13, 1985
1986	March 28, 1986
1987	April 1, 1987
1988	March 31, 1988
1989	March 29, 1989
1990	March 30, 1990
1991	March 30, 1991
1992	April 3, 1992
1992 (E.S.)	July 28, 1992
1993	March 27, 1993
1994	April 1, 1994
1995	March 17, 1995
1996	March 15, 1996
1997	March 19, 1997

1998	March 23, 1998
1999	March 19, 1999
2000	April 5, 2000
2001	March 30, 2001
2002	March 15, 2002
2003	May 3, 2003
2004	March 20, 2004
2005	April 6, 2005
2006	April 11, 2006
2006 (E.S)	August 25, 2006
2007	March 30, 2007
2008	April 2, 2008
2009	May 8, 2009
2010	March 29, 2010
2011	April 7, 2011
2012	March 29, 2012

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TITLE 55

PROPERTY IN GENERAL

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PROPERTY AND OWNERSHIP — GENERAL PROVISIONS

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55-101. Real property defined. — Real property or real estate consists of:

1. Lands, possessory rights to land, ditch and water rights, and mining claims, both lode and placer.

2. That which is affixed to land.
3. That which is appurtenant to land.

History.

R.S., § 2825; reen. R.C. & C.L., § 3056;
C.S., § 5325; I.C.A., § 54-101.

STATUTORY NOTES**Cross References.**

"Real property" defined, § 73-114.

"Real property" defined in tax laws, § 63-201.

JUDICIAL DECISIONS**ANALYSIS**

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Ditches.

Fixtures.

Grass and timber.

Hereditaments.

Mobile homes.

Shares in irrigation company.

Water.

—Attributes of real property lacking.

—Permits.

—Rights.

Buildings.

Hotel building affixed to land and held and conveyed as real estate, with the land upon which it stands, is real estate within the meaning of this section, and its character as such cannot be changed by attempted execution of a chattel mortgage purporting to cover building apart from land. *Beeler v. C.C. Mercantile Co.*, 8 Idaho 644, 70 P. 943 (1902).

Buildings built by school district on land deeded for school purposes did not revert to grantor despite reversionary clause to that effect, since reversionary clause was invalid. *Independent Sch. Dist. No. 7 v. Barnes*, 71 Idaho 203, 228 P.2d 939 (1950).

Ditches.

Ditches and water rights are real estate under the provisions of this section. *Ada County Farmers' Irrigation Co. v. Farmers Canal Co.*, 5 Idaho 793, 51 P. 990 (1898); *Nelson Bennett Co. v. Twin Falls Land & Water Co.*, 14 Idaho 5, 93 P. 789 (1908); *Brunzell v. Stevenson*, 30 Idaho 202, 164 P. 89 (1917).

In action to quiet title to irrigation ditch, where rights of parties are mutual, court may direct each to pay costs. *Mahaffey v. Carpenter*, 42 Idaho 619, 248 P. 13 (1926).

Ditches, by means of which water is diverted from irrigation canal and conveyed to user's land, are appurtenant to land and are real property. *Randall Canal Co. v. Randall*, 56 Idaho 99, 50 P.2d 593 (1935).

Fixtures.

A fixture is "real property" for the purposes of § 5-241. *West v. El Paso Prods. Co.*, 122 Idaho 133, 832 P.2d 306 (1992).

Grass and Timber.

Grasses growing from perennial roots are real estate. *Severe v. Gooding*, 43 Idaho 755, 254 P. 1054 (1927).

Standing timber or stumpage is real estate. *Spence v. Price*, 48 Idaho 121, 279 P. 1092 (1929).

Standing uncut timber is real property. *Howard v. Estate of Howard*, 112 Idaho 306, 732 P.2d 275 (1987).

The sale of land with timber on it was not the same as a sale of timber such that the income distribution mechanism of the trust was triggered, where the will distinguished between sales of realty and sales of timber, and the testator was knowledgeable in the business of timber land transactions. *Howard v. Estate of Howard*, 112 Idaho 306, 732 P.2d 275 (1987).

Hereditaments.

Real property includes that which is appurtenant to the land; it includes all easements attached to the land; and, it includes hereditaments, whether corporeal or incorporeal, such as easements, and every interest in land. *Hughes v. State*, 80 Idaho 286, 328 P.2d 397 (1958).

Mobile Homes.

Mobile home was affixed to the land at the

time of a non-judicial foreclosure sale and, therefore, was converted to real property pursuant to this section, as the owner had installed a well set-up, with a pump, pressure tanks, and lines; a septic system with inspections and hookup to the home; a driveway; power lines; and a foundation, decks, and mobile set-up. *Spencer v. Jameson*, 147 Idaho 497, 211 P.3d 106 (2009).

Shares in Irrigation Company.

While shares in irrigation company have been held to be personal property, ownership of shares in mutual irrigation company not organized for profit is but incidental to ownership of water right. *Ireton v. Idaho Irrigation Co.*, 30 Idaho 310, 164 P. 687 (1917).

In action to quiet title to certain shares of canal company stock, where it was shown that plaintiff had notice of defendants' open, notorious and uninterrupted use of water right represented by such shares, by virtue of which the defendants gained prescriptive title thereto, the court properly quieted title to the stock in defendants. *Pflueger v. Hopple*, 66 Idaho 152, 156 P.2d 316 (1945).

Water.

—Attributes of Real Property Lacking.

A water right does not have all the attributes of a real property interest, in that the water right may be conveyed without a complete legal description and may be lost through nonuse. *Crow v. Carlson*, 107 Idaho 461, 690 P.2d 916 (1984).

—Permits.

Permit to appropriate water is not real property. It is not an appropriation of public waters of state but merely the consent given by state to construct and acquire real property. *Speer v. Stephenson*, 17 Idaho 707, 102 P. 365 (1909); *Marshall v. Niagara Springs Orchard Co.*, 22 Idaho 144, 125 P. 208 (1912); *Basinger v. Taylor*, 30 Idaho 289, 164 P. 522 (1917).

Water right is real estate and must be conveyed as real estate, and where one has a valid water permit issued to him by state engineer, he cannot convey water right secured thereby by simply handing permit to a would-be purchaser. *Gard v. Thompson*, 21 Idaho 485, 123 P. 497 (1912).

—Rights.

Water right is real estate. *Albion-Idaho Land Co. v. Adams*, 58 F. Supp. 579 (D. Idaho 1945); *Knowles v. New Sweden Irrigation Dist.*, 16 Idaho 217, 101 P. 81 (1908); *Nielson v. Parker*, 19 Idaho 727, 115 P. 488 (1911); *Nampa & Meridian Irrigation Dist. v. Briggs*, 27 Idaho 84, 147 P. 75 (1915); *Bennett v. Twin Falls North Side Land & Water Co.*, 27 Idaho 643, 150 P. 336 (1915).

Water right is real property and may be sold and transferred separately from land upon which it is used, same as any other real property. *Hard v. Boise City Irrigation & Land Co.*, 9 Idaho 589, 76 P. 331 (1904); *Boise City Irrigation & Land Co. v. Stewart*, 10 Idaho 38, 77 P. 25 (1904); *Twin Falls Canal Co. v. Shippen*, 46 Idaho 787, 271 P. 578 (1928).

Water right is an appurtenance to land irrigated by use of such water. *Taylor v. Hulett*, 15 Idaho 265, 97 P. 37 (1908); *Paddock v. Clark*, 22 Idaho 498, 126 P. 1053 (1912).

While shares of water stock may be personalty, the water right which such shares control is real property. *Bothwell v. Keefer*, 53 Idaho 658, 27 P.2d 65 (1933).

A water right is real property and may be sold as such, with the purchaser acquiring no greater right than his vendor. *Beecher v. Cassia Creek Irrigation Co.*, 66 Idaho 1, 154 P.2d 507 (1944).

A water right, being real property, may be acquired through prescriptive title by adverse possession and use for more than the statutory period. *Pflueger v. Hopple*, 66 Idaho 152, 156 P.2d 316 (1945).

Plaintiff, who had prior decreed rights to water was entitled to recover damages from the defendants for loss or damage to plaintiff's crops proximately caused by acts of defendants, which deprived plaintiff of the water decreed to his land and to the use of which he was entitled. *Follett v. Taylor Bros.*, 77 Idaho 416, 294 P.2d 1088 (1956).

Appellants' decreed water right constitutes real property and such right is appurtenant to appellants' land to which the water represented thereby has been beneficially applied. *Anderson v. Cummings*, 81 Idaho 327, 340 P.2d 1111 (1959).

Inasmuch as water rights are real property which may be protected by injunction, mandamus or prohibition when threatened, lessor's complaint, which alleged that as a result of lessees' failure to use water rights they were in danger of being lost, stated a claim for equitable relief and should not have been dismissed. *Olson v. Bedke*, 97 Idaho 825, 555 P.2d 156 (1976).

Because the senior appropriators had acquired water rights, they had property rights under this section that could not be taken from them for public or private use, except by due process of law. When there was insufficient water to satisfy both the senior appropriators' and the junior appropriators' water rights, giving the junior appropriators a preference to the use of the water would constitute a taking for which compensation was required under Idaho Const., Art. XV, § 3. *Clear Springs Foods, Inc. v. Spackman*, 150 Idaho 790, 252 P.3d 71 (2011).

Cited in: *Idaho Irrigation Co. v. Gooding*, 285 F. 453 (9th Cir. 1922); *Welch v. Garrett*, 5

Idaho 639, 51 P. 405 (1897); *Hall v. Blackman*, 8 Idaho 272, 68 P. 19 (1902); *Johnson v. Hurst*, 10 Idaho 308, 77 P. 784 (1904); *Twin Falls Bank & Trust Co. v. Weinberg*, 44 Idaho 332, 257 P. 31 (1927); *State v. Finch*, 79 Idaho 275, 315 P.2d 529 (1957); *Duff v. Draper*, 98 Idaho 379, 565 P.2d 572 (1977); *Olson v. Idaho Dep't of Water Resources*, 105 Idaho 98, 666 P.2d 188 (1983); *Golden Condor, Inc. v. Bell*, 106

Idaho 280, 678 P.2d 72 (Ct. App. 1984), *aff'd*, 112 Idaho 1086, 739 P.2d 385 (1987); *Fulton v. Duro*, 107 Idaho 240, 687 P.2d 1367 (Ct. App. 1984); *Clearwater Minerals Corp. v. Presnell*, 111 Idaho 945, 729 P.2d 420 (Ct. App. 1986); *Sun Valley Hot Springs Ranch, Inc. v. Kelsey*, 131 Idaho 657, 962 P.2d 1041 (1998); *Chavez v. Barrus*, 146 Idaho 212, 192 P.3d 1036 (2008).

RESEARCH REFERENCES

Am. Jur. — 63C Am. Jur. 2d, Property, §§ 1, 11 to 23.

C.J.S. — 73 C.J.S., Property, § 21 et seq.

55-101A. "Lands" defined. — Lands are the material of the earth, whatever may be the ingredients of which it is composed, whether soil, rock or other substance, and include free or occupied space for an indefinite distance upwards as well as downwards, subject to limitations upon the use of airspace imposed and rights in the use of airspace granted, by law.

History.

I.C., § 55-101A, as added by 1965, ch. 104, § 1, p. 190.

RESEARCH REFERENCES

Am. Jur. — 63C Am. Jur. 2d, Property, § 16.

55-101B. "Condominium" defined. — A condominium is an estate consisting of (i) an undivided interest in common in real property, in an interest or interests in real property, or in any combination thereof, together with (ii) a separate interest in real property, in an interest or interests in real property, or in any combination thereof.

History.

I.C., § 55-101B, as added by 1965, ch. 104, § 2, p. 190.

55-102. Personal property defined. — Every kind of property that is not real is personal.

History.

R.S., § 2826; *reen.* R.C. & C.L., § 3057; C.S., § 5326; I.C.A., § 54-102.

STATUTORY NOTES

Cross References.

"Personal property" defined, § 73-114.
"Personal property" defined in revenue law, § 63-201.

Wildlife property of the state, § 36-103.

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Income.

Apple Crop.
Apple crop is personal property. Twin Falls Bank & Trust Co. v. Weinberg, 44 Idaho 332, 257 P. 31 (1927).
Income.
Income is included within generic definition of personal property. Diefendorf v. Gallet, 51 Idaho 619, 10 P.2d 307 (1932).

Cited in: U-Haul Co. v. Armstrong, 107 Idaho 31, 684 P.2d 1008 (Ct. App. 1984); Fremont-Madison Irrigation Dist. v. United States Dep't of Interior, 763 F.2d 1084 (9th Cir. 1985); Chavez v. Barrus, 146 Idaho 212, 192 P.3d 1036 (2008).

RESEARCH REFERENCES

Am. Jur. — 63C Am. Jur. 2d, Property, §§ 1, 11 to 33.
C.J.S. — 73 C.J.S., Property, § 1 et seq.

A.L.R. — What passes under term “personal property” in will. 31 A.L.R.5th 499.

55-103. Who may own property. — Any person, whether citizen or alien, may take, hold and dispose of property, real or personal.

History.
R.S., § 2827; reen. R.C. & C.L., § 3058;
C.S., § 2827; I.C.A., § 54-103.

STATUTORY NOTES

Cross References.
Inheritance by aliens, § 15-2-112.

JUDICIAL DECISIONS

Cited in: Hill v. Hill, 140 Idaho 812, 102 P.3d 1131 (2004).

RESEARCH REFERENCES

Am. Jur. — 63C Am. Jur. 2d, Property, § 29.

C.J.S. — 73 C.J.S., Property, § 21 et seq.

55-104. Interests in common. — Every interest created in favor of several persons in their own right is an interest in common, unless acquired by them in partnership, for partnership purposes, or unless declared in its creation to be a joint interest, or unless acquired as community property.

History.
R.S., § 2828; reen. R.C. & C.L., § 3059;
C.S., § 5328; I.C.A., § 54-104.

STATUTORY NOTES

Cross References.

Cointerests deemed to be in common, § 55-508.

"Community property" defined, § 32-906.

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Incidents of cotenancy.

Joint tenancy.

—Abrogation.

—Bank account.

—Enforcement of debts against.

—Survivorship.

Presumption from possession.

Accounting Between Cotenants.

Where a cotenant leases or lets property for profit, he must account to his cotenant. *Washington County Irrigation Dist. v. Talboy*, 55 Idaho 382, 43 P.2d 943 (1935).

Burden of Proof.

Where money in a joint tenancy survivorship account is deposited by one party, and after his death a question of his intent arises, the party asserting the gift must prove all the elements of a gift, excepting irrevocable delivery, by clear and convincing evidence. *In re Estate of Chase*, 82 Idaho 1, 348 P.2d 473 (1960).

Cotenants in Water.

As respects the right of irrigation district to recover damages from other districts for diversion of unused stored water in reservoir, districts which were not using water on their own land, but who were distributing appropriations to land owners and collecting rent therefor, were cotenants. *Washington County Irrigation Dist. v. Talboy*, 55 Idaho 382, 43 P.2d 943 (1935).

In an irrigation district's action for damages for diversion of water from a reservoir by co-owner, co-owner could not profit by failure of the district to make final proof of completion of diversion works, or take from reservoir the district's share of water and distribute it to its consumers, where co-owner made its proof of completion of diversion works for its share of water and same diversion works impounded water belonging to all parties. *Washington County Irrigation Dist. v. Talboy*, 55 Idaho 382, 43 P.2d 943 (1935).

Estoppel of Co-owner.

In an irrigation district's action against

co-owner for diversion of unused waters from reservoir, co-owner is estopped to set up provision of contract that waters reserved to district's grantors should be appurtenant to lands and to be used only for irrigation of lands and domestic and stock use therefrom, where co-owners took same water and distributed it to its water users outside of the district. *Washington County Irrigation Dist. v. Talboy*, 55 Idaho 382, 43 P.2d 943 (1935).

Incidents of Cotenancy.

Cotenant cannot take advantage of any defect in the common title by purchasing an outstanding title or encumbrance and assert it against his companions in interest. Legal title acquired by him is held in trust for the others if they choose within a reasonable time to claim the benefit of the purchase by contributing or offering to contribute their proportion of the purchase money. *Wilson v. Linder*, 21 Idaho 576, 123 P. 487 (1912).

Tenant in common is entitled to contribution for expenditures absolutely necessary for the benefit and preservation of the common property and may charge cotenants with their proportion of the reasonable expenses incurred fairly and in good faith for the benefit of the common property. *Keyser v. Morehead*, 23 Idaho 501, 130 P. 992 (1913).

A tenant in common is entitled to the use, benefit and possession of common property, provided he does not exclude his cotenant from like use and benefit. *Washington County Irrigation Dist. v. Talboy*, 55 Idaho 382, 43 P.2d 943 (1935).

Joint Tenancy.

—Abrogation.

Under this section and § 55-508 the com-

mon-law rule of joint tenancy has been abrogated, and every interest in real estate granted or devised to two or more persons, other than executors or trustees, constitutes a tenancy in common, unless expressly declared to the contrary. *Powell v. Powell*, 22 Idaho 531, 126 P. 1058 (1912).

This section, abrogating the common-law rule of joint tenancy, does not abolish such tenancy. It merely declares that such an interest is in common "unless declared in its creation to be a joint interest." *Gray v. Gray*, 78 Idaho 439, 304 P.2d 650 (1956).

A joint tenancy may be terminated prior to the death of one of the joint tenants by any act of the joint tenants which destroys one or more of the essential common-law unities of interest, title, time and possession. *Ogilvie v. Idaho Bank & Trust Co.*, 99 Idaho 361, 582 P.2d 215 (1978).

—Bank Account.

Where the tenancy was created by a written agreement in which the parties declared the tenancy to be joint, a valid gift of a joint interest in the account with right of survivorship was made and effectively delivered to the plaintiff, one of the parties, at the time the account was created, and, therefore, the balance in the account at the time of the death of one of the parties was and is the property of the plaintiff. *Gray v. Gray*, 78 Idaho 439, 304 P.2d 650 (1956).

All the elements of a valid gift inter vivos may or may not be present in the creation of a joint tenancy in a bank account. The gift may or may not be involved. The essentials of a

valid joint tenancy account are those set out in S.L. 1943, ch. 30, § 1 and this section. These essentials being present, the right of the survivor does not depend on the fact of a completed gift. *Gray v. Gray*, 78 Idaho 439, 304 P.2d 650 (1956).

—Enforcement of Debts Against.

Because of the right of survivorship, debts secured by jointly owned property by a debtor joint tenant are not enforceable against the joint tenancy property after the death of the debtor joint tenant, unless one or more of the essential unities was destroyed prior to the joint tenancy's termination by death, and then only to the extent of the debtor joint tenant's interest. *Ogilvie v. Idaho Bank & Trust Co.*, 99 Idaho 361, 582 P.2d 215 (1978).

—Survivorship.

The fact that real property was purchased by the husband and wife with joint tenancy funds did not create a joint tenancy with right of survivorship in the realty. *Greene v. Cooke*, 96 Idaho 48, 524 P.2d 176 (1973).

Presumption from Possession.

The law presumes that possession of one cotenant is possession of all cotenants, and no presumption of abandonment arises. *Washington County Irrigation Dist. v. Talboy*, 55 Idaho 382, 43 P.2d 943 (1935).

Cited in: *Twin Falls Canal Co. v. American Falls Reservoir Dist. No. 2*, 49 F.2d 632 (D. Idaho 1931); *Zimmerman v. Spickelmire* (In re Spickelmire), 433 B.R. 792 (Bankr. D. Idaho 2010).

RESEARCH REFERENCES

Am. Jur. — 20 Am. Jur. 2d, Cotenancy and Joint Ownership, § 1.

C.J.S. — 86 C.J.S., Tenancy in Common, §§ 1, 2.

A.L.R. — Estate by entireties as affected by statute declaring nature of tenancy under

grant or devise to two or more persons. 32 A.L.R.3d 570.

Termination of tenancy, what acts by one or more of joint tenants will sever or terminate the tenancy. 39 A.L.R.4th 1068.

55-105. Future interests — When vested. — A future interest is vested when there is a person in being who would have a right, defeasible or indefeasible, to the immediate possession of the property upon the ceasing of the immediate or precedent interest.

History.

R.S., § 2830; reen. R.C. & C.L., § 3061; C.S., § 5329; I.C.A., § 54-105.

JUDICIAL DECISIONS

ANALYSIS

Alien beneficiaries of trust.
Easement with vested rights.

Right of refusal.
Vesting.

Alien Beneficiaries of Trust.

Under inter vivos trust agreement that named 14 German citizens as beneficiaries and provided that annual payments of income be made at the discretion of the trustees, that any beneficiary coming to the United States was to be paid his share of trust estate, and that payments should not be subject to confiscation by or create sinews of war for any government antagonistic to the United States it was not possible after the time of making the conveyance for any person other than the named beneficiaries of the trust to acquire a property interest in it other than through a named beneficiary. *Hermann v. Brownell*, 274 F.2d 842 (9th Cir.), cert. denied, 364 U.S. 821, 81 S. Ct. 56, 5 L. Ed. 2d 50 (1960).

Easement with Vested Rights.

Where the original grantors of an easement gave grantees the right at any time to lay and maintain an additional pipeline or pipelines alongside of the first one, the grantors did not

only create a mere option, but also an expandable easement with vested rights not affected by the rule against perpetuities, nor did the contract suspend the power of alienation in violation of this section. *Northwest Pipeline Corp. v. Forrest Weaver Farm, Inc.*, 103 Idaho 180, 646 P.2d 422 (1982).

Right of Refusal.

A preemptive right of first refusal at the owner's own price or a third-parties' bona fide offer which the owner is willing to accept does not suspend the absolute power of alienation of real property. *Meridian Bowling Lanes, Inc. v. Meridian Athletic Ass'n*, 105 Idaho 509, 670 P.2d 1294 (1983).

Vesting.

Where will devises property to testator's widow for life with remainder to testator's son, title to property vests immediately in son upon the death of testator. *Coats v. Harris*, 9 Idaho 458, 75 P. 243 (1904).

RESEARCH REFERENCES

Am. Jur. — 28 Am. Jur. 2d, Estates, §§ 229, 230, 272 to 275.

C.J.S. — 31 C.J.S., Estates, § 85 et seq.

55-106. Contingent interests. — A future interest is contingent whilst the person in whom, or the event upon which, it is limited to take effect remains uncertain.

History.

R.S., § 2831; reen. R.C. & C.L., § 3062; C.S., § 5330; I.C.A., § 54-106.

STATUTORY NOTES

Cross References.

Rule in *Shelley's Case* abolished, § 55-206.

JUDICIAL DECISIONS

Cited in: *Wilson v. Linder*, 18 Idaho 438, 110 P. 274 (1910); *Hermann v. Brownell*, 274 F.2d 842 (9th Cir. 1960).

RESEARCH REFERENCES

Am. Jur. — 28 Am. Jur. 2d, Estates, § 231 et seq.

C.J.S. — 31 C.J.S., Estates, § 85 et seq.

55-107. Alternative future interests. — Two (2) or more future interests may be created to take effect in the alternative; so that if the first

in order fails to vest, the next in succession shall be substituted for it, and take effect accordingly.

History.

R.S., § 2832; reen. R.C. & C.L., § 3063;
C.S., § 5331; I.C.A., § 54-107.

RESEARCH REFERENCES

Am. Jur. — 28 Am. Jur. 2d, Estates, §§ 329, 330. grant to one for life or term of years and then to remainderman, but if remainderman dies without issue, then over to another. 26

C.J.S. — 31 C.J.S., Estates, § 93.

A.L.R. — Time to which condition of remainderman's death refers, under gift or A.L.R.3d 407.

55-108. Inheritance by posthumous children. — When a future interest is limited to successors, heirs, issue or children, posthumous children are entitled to take in the same manner as if living at the death of their parent.

History.

R.S., § 2833; reen. R.C. & C.L., § 3064;
C.S., § 5332; I.C.A., § 54-108.

STATUTORY NOTES

Cross References.

Unborn child as existing person, § 32-102.

RESEARCH REFERENCES

Am. Jur. — 23 Am. Jur. 2d, Descent and Distribution, § 77 et seq.

C.J.S. — 26B C.J.S., Descent and Distribution, § 37.

A.L.R. — Legal status of posthumously conceived child of decedent. 17 A.L.R.6th 593.

55-109. Transfer and devolution of future interests. — Future interests pass by succession, will and transfer in the same manner as present interests.

History.

R.S., § 2834; reen. R.C. & C.L., § 3065;
C.S., § 5333; I.C.A., § 54-109.

JUDICIAL DECISIONS

Cited in: Hermann v. Brownell, 274 F.2d 842 (9th Cir. 1960).

RESEARCH REFERENCES

Am. Jur. — 28 Am. Jur. 2d, Estates, § 347 et seq.

C.J.S. — 31 C.J.S., Estates, §§ 104 to 110.

55-110. Possibilities. — A mere possibility, such as the expectancy of an heir apparent, is not to be deemed an interest of any kind.

History.

R.S., § 2835; reen. R.C. & C.L., § 3066;
C.S., § 5334; I.C.A., § 54-110.

STATUTORY NOTES

Cross References.

Transfer of possibilities barred, § 55-501.

JUDICIAL DECISIONS

Settlor of Trust.

Where under inter vivos trust agreement the possibility that the trust property might revert to the settlor was inalienable, unsalable and remote, settlor had no interest of any

kind in the trust property. *Hermann v. Brownell*, 274 F.2d 842 (9th Cir.), cert. denied, 364 U.S. 821, 81 S. Ct. 56, 5 L. Ed. 2d 50 (1960).

55-111. No rule against perpetuities. — There shall be no rule against perpetuities applicable to real or personal property.

History.

R.S., § 2836; reen. R.C. & C.L., § 3067;

C.S., § 5335; I.C.A., § 54-111; am. 1957, ch. 54, § 1, p. 92; am. 2008, ch. 77, § 1, p. 204.

STATUTORY NOTES

Amendments.

The 2008 amendment, by ch. 77, rewrote the section, substituting the heading "No rule against perpetuities" for "suspension of power of alienation". See § 55-111A for present similar provisions.

other acts, or parts of acts, in conflict with this act to the extent of said conflict are hereby repealed."

Effective Dates.

Section 3 of S.L. 1957, ch. 54 declared an emergency. Approved February 20, 1957.

Compiler's Notes.

Section 2 of S.L. 1957, ch. 54 read: "All

55-111A. Suspension of power of alienation — Future interest by power of appointment. — (1) The absolute power of alienation of property cannot be suspended by any limitation or condition whatever, for a longer permissible period than during the continuance of the lives of the persons in being at the creation of the limitation or condition, and twenty-five (25) years thereafter. No trust heretofore or hereafter created, either testamentary or inter vivos, shall be declared void, but shall be so construed as to eliminate parts violating the above provisions, and in such a way that the testators or trustors wishes are carried out to the greatest extent permitted by this section; and there shall be no presumption that a person is capable of having children at any stage of adult life.

(2) If a future interest or trust is created by exercise of a power of appointment, the permissible period is computed from the time the power is exercised if the power is a general power including a testamentary general power or from the time the power is created if the power is not a general power.

(3) Notwithstanding the provisions of subsection (1) of this section, there

is no suspension of the power of alienation of property by a trust or by equitable interests under a trust if the trustee has power to sell, either express or implied, or if there is an unlimited power to terminate in one (1) or more persons in being.

(4) Furthermore, the provisions of subsection (1) of this section shall not limit transfers, outright or in trust, for charitable purposes or transfers to charitable entities.

History.

I.C., § 55-111A, as added by 2008, ch. 77,
§ 2, p. 205.

JUDICIAL DECISIONS

DECISIONS UNDER PRIOR LAW

ANALYSIS

Charitable gift.

Deed.

Rule against perpetuities.

Testamentary trusts.

Charitable Gift.

The language of the possession list making gifts to various friends and charitable organizations did not offend the rule against suspension of the power of alienation pursuant to this section because this rule does not apply to charitable trusts. *Salfeety v. Seideman*, 127 Idaho 817, 907 P.2d 794 (1995).

This section was not violated since the real property in trust was to be immediately sold upon settlor's death and the proceeds distributed to designated charities; thus, there was no suspension of the power of alienation of the real property. *Salfeety v. Seideman*, 127 Idaho 817, 907 P.2d 794 (1995).

Where the only gift which could potentially violate this section was settlor's gift of the income from the oil and gas leases, because she specifically stated in the possession list and the script that the leases should not be sold since they were a gift to charity, and because this section does not apply to charitable trusts, that gift was valid. *Salfeety v. Seideman*, 127 Idaho 817, 907 P.2d 794 (1995).

Deed.

Where a deed clearly refers to a person's interest as a life estate and the remainder interests pass at the person's death, the remainder interests vest upon the person's death and meet the requirement that a remainder interest vest or fail within twenty-five years of the death of a life in being. *Riley v. Rowan*, 131 Idaho 831, 965 P.2d 191 (1998).

Rule Against Perpetuities.

The common law rule against perpetuities is generally stated to be that no interest in

real estate is good unless it must vest, if at all, not later than twenty-one years after some life in being at the creation of the interest plus the period of gestation. *Locklear v. Tucker*, 69 Idaho 84, 203 P.2d 380 (1949).

Idaho has adopted what is intended to be a complete system governing alienation of real property; and the common-law rule against perpetuities is not in force in this jurisdiction. *Locklear v. Tucker*, 69 Idaho 84, 203 P.2d 380 (1949).

Testamentary Trusts.

A testamentary trust under which the testator bequeathed his interest in a corporation to his wife, in trust, with authority to terminate trust at any time the business proved unprofitable, but otherwise to operate the same as going concern for 10 years after testator's decease and thereafter the wife to close trust or continue it in her discretion, and with a direction that the net proceeds should be sole property of testator's wife except that profits in excess of \$20,000 in any one year should be subject to division, with the wife receiving one-half and other half being distributed among employees, did not violate statutory rule against perpetuities. *In re Zeb's Estate*, 67 Idaho 567, 189 P.2d 95 (1947).

Even though parties had agreed that the only question involved was whether or not a trust provision violated the terms of this section, a holding that, regardless of the trust provision, petitioners were barred from any relief by other provisions of will was not prejudicial in view of fact that court determined the trust provision was valid. *In re Zeb's Estate*, 67 Idaho 567, 189 P.2d 95 (1947).

RESEARCH REFERENCES

Am. Jur. — 61 Am. Jur. 2d, Perpetuities and Restraints on Alienation, §§ 6 to 16, 18 to 29, 33 to 40, 43 to 99.

C.J.S. — 70 C.J.S., Perpetuities, § 50 et seq.

A.L.R. — Option to purchase as violation against rule forbidding restraints on alienation. 66 A.L.R.3d 1294.

55-112. Future interests defeated. — A future interest, depending on the contingency of the death of any person without successors, heirs, issue or children, is defeated by the birth of a posthumous child of such person capable of taking by succession.

History.

R.S., § 2837; reen. R.C. & C.L., § 3068; C.S., § 5336; I.C.A., § 54-112.

RESEARCH REFERENCES

Am. Jur. — 28 Am. Jur. 2d, Estates, §§ 357 to 363.

C.J.S. — 31 C.J.S., Estates, §§ 112 to 116.

55-113. Future interests not defeated. — No future interest can be defeated or barred by any alienation or other act of the owner of the intermediate or precedent interest, nor by any destruction of such precedent interest by forfeiture, surrender, merger or otherwise.

History.

R.S., § 2838; reen. R.C. & C.L., § 3069; C.S., § 5337; I.C.A., § 54-113.

55-114. Future interests not defeated by premature determination of precedent estate. — No future interest, valid in its creation, is defeated by the determination of the precedent interest before the happening of the contingency on which the future interest is limited to take effect; but should such contingency afterward happen, the future interest takes effect in the same manner and to the same extent as if the precedent interest had continued to the same period.

History.

R.S., § 2839; reen. R.C. & C.L., § 3070; C.S., § 5338; I.C.A., § 54-114.

CHAPTER 2

ESTATES IN REAL PROPERTY

SECTION.

55-201. Limitation of future estates.

55-202. Successive remainders in fee.

55-203. Limitation of successive life estates.

55-204. Remainders upon successive life estates.

55-205. Contingent remainder.

55-206. Rule in Shelley's case abolished.

SECTION.

55-207. Power of appointment.

55-208. Termination of tenancy at will.

55-209. Termination of tenancy at will — Rights of landlord.

55-210. Right of reentry.

55-211. Summary proceedings — Where provided for.

SECTION.

55-212. Action for real property — Notice unnecessary.

55-201. Limitation of future estates. — A future estate may be limited by the act of the party to commence in possession at a future day, either without the intervention of a precedent estate, or on the termination, by lapse of time or otherwise, of a precedent estate created at the same time.

History.

R.S., § 2850; reen. R.C. & C.L., § 3071;
C.S., § 5339; I.C.A., § 54-201.

RESEARCH REFERENCES

Am. Jur. — 28 Am. Jur. 2d, Estates, §§ 221 to 226. **C.J.S.** — 31 C.J.S., Estates, §§ 95 to 99.

55-202. Successive remainders in fee. — A contingent remainder in fee may be created on a prior remainder in fee, to take effect in the event that the persons to whom the first remainder is limited die under the age of twenty-one (21) years, or upon any other contingency by which the estate of such persons may be determined before they attain majority.

History.

R.S., § 2851; reen. R.C. & C.L., § 3072;
C.S., § 5340; I.C.A., § 54-202.

STATUTORY NOTES**Cross References.**

Rule in Shelley's Case abrogated, § 55-206. Suspension of power of alienation, § 55-111A.

JUDICIAL DECISIONS

Cited in: *Wilson v. Linder*, 18 Idaho 438, 110 P. 274 (1910).

RESEARCH REFERENCES

Am. Jur. — 28 Am. Jur. 2d, Estates, §§ 239, 240, 330. **C.J.S.** — 31 C.J.S., Estates, § 93.

55-203. Limitation of successive life estates. — Successive estates for life cannot be limited, except to persons in being at the creation thereof, and all life estates subsequent to those of persons in being are void; and upon the death of those persons the remainder, if valid in its creation, takes effect in the same manner as if no other life estate had been created.

History.

R.S., § 2852; reen. R.C. & C.L., § 3073;
C.S., § 5341; I.C.A., § 54-203.

RESEARCH REFERENCES

C.J.S. — 31 C.J.S., Estates, § 35 et seq.

55-204. Remainders upon successive life estates. — No remainder can be created upon successive estates for life, provided for in the preceding section, unless such remainder is in fee; nor can a remainder be created upon such estate in a term for years, unless it is for the whole residue of such term.

History.

R.S., § 2853; reen. R.C. & C.L., § 3074;
C.S., § 5342; I.C.A., § 54-204.

55-205. Contingent remainder. — A remainder may be limited on a contingency which, in case it should happen, will operate to abridge or determine the precedent estate; and every such remainder is to be deemed a conditional limitation.

History.

R.S., § 2854; reen. R.C. & C.L., § 3075;
C.S., § 5343; I.C.A., § 54-205.

JUDICIAL DECISIONS

Cited in: *Wilson v. Linder*, 18 Idaho 438,
110 P. 274 (1910).

RESEARCH REFERENCES

C.J.S. — 31 C.J.S., Estates, §§ 90 to 94. to maintain action for damages for waste. 56
A.L.R. — Contingent remaindermen, right A.L.R.3d 677.

55-206. Rule in Shelley's case abolished. — When a remainder is limited to the heirs, or heirs of the body, of a person to whom a life estate in the same property is given, the persons who, on the termination of the life estate, are the successors or heirs of the body of the owner for life, are entitled to take by virtue of the remainder, so limited to them, and not as mere successors of the owner for life.

History.

R.S., § 2855; reen. R.C. & C.L., § 3076;
C.S., § 5344; I.C.A., § 54-206.

JUDICIAL DECISIONS

Heirs.

Under provisions of this section the common-law rule, generally known as the rule in *Shelley's case*, has been abrogated, and term

"heirs" has been changed from a word of limitation to one of purchase. *Wilson v. Linder*, 18 Idaho 438, 110 P. 274 (1910).

RESEARCH REFERENCES

Am. Jur. — 28 Am. Jur. 2d, Estates, § 106 et seq. **C.J.S.** — 31 C.J.S., Estates, § 3.

55-207. Power of appointment. — A general or special power of appointment does not prevent the vesting of a future estate limited to take effect in case such power is not executed.

History.

R.S., § 2856; reen. R.C. & C.L., § 3077;
C.S., § 5345; I.C.A., § 54-207.

RESEARCH REFERENCES

Am. Jur. — 62 Am. Jur. 2d, Powers of Appointment and Alienation, § 1 et seq. **C.J.S.** — 72 C.J.S., Powers, § 1 et seq.

55-208. Termination of tenancy at will. — A tenancy or other estate at will, however created, may be terminated:

(1) By the landlord's giving notice in writing to the tenant, in the manner prescribed by the code of civil procedure, to remove from the premises within a period of not less than one (1) month, to be specified in the notice; or

(2) By the tenant giving notice in writing to the landlord that the tenant will be vacating the premises, on a date as specified in the notice, but not less than one (1) month from the date of notice.

History.

R.S., § 2857; reen. R.C. & C.L., § 3078; C.S., § 5346; I.C.A., § 54-208; am. 2002, ch. 295, § 1, p. 848.

STATUTORY NOTES

Cross References.

Service of notice on tenant, § 6-304.

subsection (1), is a division of the Idaho Code, consisting of Titles 1 through 13.

Compiler's Notes.

The code of civil procedure, referred to in

JUDICIAL DECISIONS

ANALYSIS

Inapplicable to orders to vacate.
Notice.

Inapplicable to Orders to Vacate.

This section has no application to court orders directing a party to vacate premises; thus, court order directing tenants to vacate premises on less than one-month's notice was not violative of this section. *Hinkle v. Winey*, 126 Idaho 993, 895 P.2d 594 (Ct. App. 1995).

Notice.

Where the first notice sent by a gas company informing a bulk plant operator of the company's desire to terminate distributor and consignment agreements did not afford the

operator the required one-month notice to vacate the bulk plant, but where a second written notice was served on the operator to vacate the plant on date more than one month following service of the note, the bulk plant operator had sufficient notice of termination of the tenancy at will. *Texaco, Inc. v. Johnson*, 96 Idaho 935, 539 P.2d 288 (1975).

Where original lessee assigned lease to second party without approval of lessor as required by lease but lessor did not treat such party as a trespasser after the expiration of the original lease and did not at that time

demand that he vacate the property; nor did they bring an unlawful detainer action against him but continued to accept rent from him a new tenancy, implied from conduct, arose by operation of law; thus such party was entitled to a minimum of one month's notice, under the provisions of this section, before the

tenancy could be terminated and it is clear that until the tenancy was legally terminated such party had the right to remove improvements. *Lewiston Pre-Mix Concrete, Inc. v. Rohde*, 110 Idaho 640, 718 P.2d 551 (Ct. App. 1985).

RESEARCH REFERENCES

Am. Jur. — 49 Am. Jur. 2d, Landlord and Tenant, §§ 119 to 123.

C.J.S. — 52 C.J.S., Landlord and Tenant, §§ 301, 302.

55-209. Termination of tenancy at will — Rights of landlord. — After such notice has been served, and the period specified by such notice has expired, but not before, the landlord may reenter, or proceed according to law to recover possession.

History.

R.S., § 2858; reen. R.C. & C.L., § 3079; C.S., § 5347; I.C.A., § 54-209.

RESEARCH REFERENCES

Am. Jur. — 49 Am. Jur. 2d, Landlord and Tenant, §§ 840 to 856.

A.L.R. — Right of landlord to dispossess tenant without legal process. 6 A.L.R.3d 177.

C.J.S. — 52B C.J.S., Landlord and Tenant, § 1484 et seq.

55-210. Right of reentry. — Whenever the right of reentry is given to a grantor or a lessor in any grant or lease, or otherwise, such reentry may be made at any time after the right has accrued, upon three (3) days' notice, as provided in the Code of Civil Procedure.

History.

R.S., § 2859; reen. R.C. & C.L., § 3080; C.S., § 5348; I.C.A., § 54-210.

STATUTORY NOTES

Cross References.

Service of notice in unlawful detainer, § 6-304.

this section, is a division of the Idaho Code, consisting of Titles 1 through 13.

Compiler's Notes.

The Code of Civil Procedure, referred to in

JUDICIAL DECISIONS

ANALYSIS

Choice of remedy.

Damages resulting from entry.

Forfeiture.

Notice.

Choice of Remedy.

A lessor's contractual right to forfeiture

must be clearly stipulated in order to be enforceable; however, even absent a contrac-

tual forfeiture remedy, such statutory remedy is still available in an unlawful detainer action. Consequently, absent a clear contractual right to declare forfeiture, a landlord may not, without the express consent of a tenant, repossess his property without resorting to remedies provided in the unlawful detainer statutes. *Riverside Dev. Co. v. Ritchie*, 103 Idaho 515, 650 P.2d 657 (1982).

Where a lease agreement contained a very definitive contractual right to terminate the lease upon default of the lessee, the lessor had a choice of pursuing either its contractual or statutory remedy. *Riverside Dev. Co. v. Ritchie*, 103 Idaho 515, 650 P.2d 657 (1982).

Damages Resulting from Entry.

Where landlord entered to harvest and pack apples to which he was entitled as rent, the only question involved is the damages resulting to tenant from entry. *Muegerl v. Hawley*, 49 Idaho 790, 292 P. 242 (1930).

Forfeiture.

The remedy of forfeiture permitted under the unlawful detainer statutes is merely cumulative to any contractual right of reentry provided for in the lease agreement. *Riverside Dev. Co. v. Ritchie*, 103 Idaho 515, 650 P.2d 657 (1982).

Notice.

A notice not complying with the requirements of this section was ineffective as a cancellation of the lease. *Adair v. Freeman*, 92 Idaho 773, 451 P.2d 519 (1969).

Where a lessor of business property had the right to enter the premises because the lease had expired, three days' notice was not required, since the notice requirement set forth in this section applies only where a lessor enters premises under a right of reentry. *Ringer v. Rice*, 97 Idaho 105, 540 P.2d 290 (1975).

Where the lessor gave the lessee notice of default on May 20, 1977, for his failure to pay the May, 1977 minimum rent and, on June 22, 1977, the lessee had still not cured the default, and the lessor sent a notice of termination, the lessee thus had more than the 30 days permitted in the lease to cure the default; and since no reentry was attempted by the lessor within three days of the termination notice the notice requirement of this section was met. *Riverside Dev. Co. v. Ritchie*, 103 Idaho 515, 650 P.2d 657 (1982).

Cited in: *Maynard v. Nguyen*, — Idaho —, 274 P.3d 589 (2011).

RESEARCH REFERENCES

Am. Jur. — 49 Am. Jur. 2d, Landlord and Tenant, § 829.

C.J.S. — 52B C.J.S., Landlord and Tenant, § 1484 et seq.

A.L.R. — Right of landlord legally entitled to possession to dispossess tenant without legal process. 6 A.L.R.3d 177.

55-211. Summary proceedings — Where provided for. — Summary proceedings for obtaining possession of real property forcibly entered, or forcibly and unlawfully detained, are provided for in the Code of Civil Procedure.

History.

R.S., § 2860; reen. R.C. & C.L., § 3081; C.S., § 5349; I.C.A., § 54-211.

STATUTORY NOTES

Compiler's Notes.

The Code of Civil Procedure, referred to in

this section, is a division of the Idaho Code, consisting of Titles 1 through 13.

RESEARCH REFERENCES

Am. Jur. — 49 Am. Jur. 2d, Landlord and Tenant, § 840 et seq.

C.J.S. — 52B C.J.S., Landlord and Tenant, § 1499 et seq.

A.L.R. — Excessiveness or inadequacy of

attorneys' compensation in absence of contract or statute fixing amount. 57 A.L.R.3d 475; 57 A.L.R.3d 550; 57 A.L.R.3d 584; 23 A.L.R.5th 241; 58 A.L.R.3d 317; 10 A.L.R.5th 448; 23 A.L.R.5th 241.

55-212. Action for real property — Notice unnecessary. — An action for the possession of real property, leased or granted, with a right of reentry, may be maintained at any time, in the district court, after the right to reenter has accrued, without notice.

History.

R.S., § 2861; reen. R.C. & C.L., § 3082;
C.S., § 5350; I.C.A., § 54-212.

RESEARCH REFERENCES

Am. Jur. — 49 Am. Jur. 2d, Landlord and Tenant, § 110 et seq.	attorneys' compensation in absence of contract or statute fixing amount. 57 A.L.R.3d 475; 57 A.L.R.3d 550; 57 A.L.R.3d 584; 23 A.L.R.5th 241; 58 A.L.R.3d 317; 10 A.L.R.5th 448; 23 A.L.R.5th 241.
C.J.S. — 52B C.J.S., Landlord and Tenant, § 1541 et seq.	
A.L.R. — Excessiveness or inadequacy of	

CHAPTER 3

RIGHTS AND OBLIGATIONS OF OWNERS

SECTION.

55-301. Rights of grantees against grantor's tenants.
55-302. Remedies of lessor against lessee's assignee.
55-303. Remedies of lessee against lessor's assignee.
55-304. Recovery of rent on lease for life.
55-305. Rent on lease for life — Recovery after death.

SECTION.

55-306. Action by reversioners.
55-307. Change in terms of lease — Notice.
55-308. Removal of fixtures by tenant.
55-309. Ownership of street by abutter.
55-310. Right to lateral and subjacent support.
55-311. Duties of tenant for life.
55-312. Monuments and fences.
55-313. Relocation of access.

55-301. Rights of grantees against grantor's tenants. — A person to whom any real property is transferred or devised, upon which rent has been reserved or to whom such rent is transferred, is entitled to the same remedies for recovery of rent, for nonperformance of any of the terms of the lease, or for any waste or cause of forfeiture, as his grantor or devisor might have had.

History.

R.S., § 2875; reen. R.C. & C.L., § 3083;
C.S., § 5351; I.C.A., § 54-301.

RESEARCH REFERENCES

Am. Jur. — 49 Am. Jur. 2d, Landlord and Tenant, § 891 et seq.

55-302. Remedies of lessor against lessee's assignee. — Whatever remedies the lessor of any real property has against his immediate lessee for the breach of any agreement in the lease, or for recovery of the possession, he has against the assignees of the lessee, for any cause of action accruing while they are such assignees, except where the assignment is made by way of security for a loan, and is not accompanied by possession of the premises.

History.

R.S., § 2876; reen. R.C. & C.L., § 3084;
C.S., § 5352; I.C.A., § 54-302.

JUDICIAL DECISIONS**Assignee Bound by Lien.**

Under allegations that assignee had actual notice of provisions of lease and was successor in interest of original lessee, he is bound by

provisions of lease and equitable lien is good against him. *Neilson v. Peterson*, 37 Idaho 171, 215 P. 836 (1923).

RESEARCH REFERENCES

C.J.S. — 52 C.J.S., Landlord and Tenant,
§ 38 et seq.

55-303. Remedies of lessee against lessor's assignee. — Whatever remedies the lessee of any real property may have against his immediate lessor, for the breach of any agreement in the lease, he may have against the assigns of the lessor, and the assigns of the lessee may have against the lessor and his assigns, except upon covenants against encumbrances or relating to the title or possession of the premises.

History.

R.S., § 2877; reen. R.C. & C.L., § 3085;
C.S., § 5353; I.C.A., § 54-303.

RESEARCH REFERENCES

Am. Jur. — 49 Am. Jur. 2d, Landlord and
Tenant, § 897 et seq.

55-304. Recovery of rent on lease for life. — Rent due upon a lease for life may be recovered in the same manner as upon a lease for years.

History.

R.S., § 2878; reen. R.C. & C.L., § 3086;
C.S., § 5354; I.C.A., § 54-304.

55-305. Rent on lease for life — Recovery after death. — Rent dependent on the life of a person may be recovered after as well as before his death.

History.

R.S., § 2879; reen. R.C. & C.L., § 3087;
C.S., § 5355; I.C.A., § 54-305.

55-306. Action by reversioners. — A person having an estate in fee, in remainder or reversion, may maintain an action for any injury done to the inheritance, notwithstanding an intervening estate for life or years, and although, after its commission, his estate is transferred, and he has no interest in the property at the commencement of the action.

History.

R.S., § 2880; reen. R.C. & C.L., § 3088;
C.S., § 5356; I.C.A., § 54-306.

RESEARCH REFERENCES

- Am. Jur.** — 78 Am. Jur. 2d, Waste, §§ 12, 13. Right of contingent remainderman to maintain action for damages for waste. 56 A.L.R.3d 677.
C.J.S. — 93 C.J.S., Waste, §§ 14, 15.
A.L.R. — Forfeiture of life estate for waste. 16 A.L.R.3d 1344.

55-307. Change in terms of lease — Notice. — (1) In all leases of lands or tenements, or of any interest therein from month to month, the landlord may, upon giving notice in writing at least fifteen (15) days before the expiration of the month, change the terms of the lease, to take effect at the expiration of the month. The notice, when served upon the tenant, shall of itself operate and be effectual to create and establish, as a part of the lease, the terms, rent and conditions specified in the notice, if the tenant shall continue to hold the premises after the expiration of the month.

(2) A local governmental unit shall not enact, maintain, or enforce an ordinance or resolution that would have the effect of controlling the amount of rent charged for leasing private residential property. This provision does not impair the right of any local governmental unit to manage and control residential property in which the local governmental unit has a property interest.

History.

R.S., § 2881; reen. R.C. & C.L., § 3089; C.S., § 5357; I.C.A., § 54-307; am. 1990, ch. 185, § 1, p. 413.

RESEARCH REFERENCES

- Am. Jur.** — 49 Am. Jur. 2d, Landlord and Tenant, § 69 et seq. failure to give timely notice of exercise of option to renew or extend lease. 27 A.L.R.4th 266; 32 A.L.R.4th 452; 29 A.L.R.4th 956; 29 A.L.R.4th 903; 34 A.L.R.4th 857.
C.J.S. — 52 C.J.S., Landlord and Tenant, § 394 et seq.
A.L.R. — Circumstances excusing lessee's

55-308. Removal of fixtures by tenant. — A tenant may remove from the demised premises, any time during the continuance of his term, anything affixed thereto for the purposes of trade, manufacture, ornament or domestic use, if the removal can be effected without injury to the premises, unless the thing has, by the manner in which it is affixed, become an integral part of the premises.

History.

R.S., § 2882; reen. R.C. & C.L., § 3090;
C.S., § 5358; I.C.A., § 54-308.

STATUTORY NOTES**Cross References.**

Removal of improvements made by occupying claimant, § 6-414.

JUDICIAL DECISIONS

ANALYSIS

Fixtures.

Question for jury.

Time for removal.

Title.

Fixtures.

Property consisting of a front and back bar, ice chest, etc., placed in a saloon building by tenant and fastened to the wall and floor, constitutes trade fixtures and may be removed by tenant during the continuance of his term. *Bush v. Havird*, 12 Idaho 352, 86 P. 529 (1964).

Accepting trial court's determination that they were fixtures, a metal canopy or hood, soda fountain with compressor, stainless steel sink, air conditioner and special acid-resistant sink, installed by tenant operator of drug store, could be removed by tenant during operation of lease, not having become integral parts of the building, since removal involved no more than unscrewing attaching supports and removal of lines for electricity, water and drainage used for their service. *Pearson v. Harper*, 87 Idaho 245, 392 P.2d 687 (1964).

In determining whether a particular article has become a trade fixture, three general tests are applied: 1. annexation to the realty, either actual or constructive; 2. adaptation or application to the use or purpose to which that part of the realty to which it is connected is appropriated; and, 3. intention to make the article a permanent accession to the freehold. *Pearson v. Harper*, 87 Idaho 245, 392 P.2d 687 (1964).

Provision in lease requiring payment of \$10.00 per day during the time possession is withheld, following default and 30-day notice, is indicative of tenant's intent upon holding over; therefore, even though terms of the lease had expired, his possession was not more than a continuance of the original term, and tenant was entitled to remove trade fixtures which had not become an integral part of the premises and that could be removed without injury to the premises. *Pearson v. Harper*, 87 Idaho 245, 392 P.2d 687 (1964).

Trial court found a dividing partition was so affixed that it became an integral part of leased building and that shelving, although not an integral part of building, could not be removed without injury to the building; therefore, tenant was not authorized to remove either partition or shelving. *Pearson v. Harper*, 87 Idaho 245, 392 P.2d 687 (1964).

Where pivot irrigation system was annexed to the land, either constructively or actually, in that it was bolted to cement slabs buried in the ground, and attached to pipes and electrical wires which were buried three to four feet

underground and removal of the system necessitated digging up these buried wires and pipes, which could only result in some damage to the realty itself and such system was clearly adapted to the land since the purpose and use of the land in question was that of farming and irrigation is peculiarly necessary to a farming operation conducted in Idaho and where the gravity system in place before such system was installed was destroyed, indicating that it was no longer necessary to have the gravity system because of the permanent installation of another irrigation system, such system was a fixture. *Rayl v. Shull Enters., Inc.*, 108 Idaho 524, 700 P.2d 567 (1985).

Question for Jury.

Where the evidence presented at trial established that the equipment was very heavy and bolted to the mill and there was contradictory testimony as to whether the equipment could be removed from the mill without damage, but the jury could find that the equipment could be removed without harm to the structure, it was a question of fact for the jury to determine whether the equipment was removable under this section. *P.N. Cedar, Inc. v. D & G Shake Co.*, 110 Idaho 561, 716 P.2d 1333 (Ct. App. 1986).

Time for Removal.

Trade fixtures must be removed by tenant during continuance of his term; right to remove them is lost after a surrender of possession by tenant, or eviction by landlord by summary proceedings. *Bush v. Havird*, 12 Idaho 352, 86 P. 529 (1964).

As long as a tenant remains in possession of premises and holds over term provided by the lease, which also provides for payment of a fixed sum for each day of holding over, he is still within the purview of the statute allowing him to remove his property "any time during the continuance of his term." *Pearson v. Harper*, 87 Idaho 245, 392 P.2d 687 (1964).

Where original lessee assigned lease to second party without approval of lessor as required by lease but lessor did not treat such party as a trespasser after the expiration of the original lease and did not, at that time, demand that he vacate the property, nor did he bring an unlawful detainer action against the assignee but continued to accept rent from him, a new tenancy, implied from conduct, arose by operation of law; thus such party was

entitled to a minimum of one month's notice, under the provisions of § 55-208, before the tenancy could be terminated and it is clear that, until the tenancy was legally terminated, such party had the right to remove improvements. *Lewiston Pre-Mix Concrete, Inc. v. Rohde*, 110 Idaho 640, 718 P.2d 551 (Ct. App. 1985).

Title.

If lease does not give tenant right to remove trade fixtures, failure of tenant to remove trade fixtures prior to expiration of lease vests title to trade fixtures in landlord. *Fidelity Trust Co. v. State*, 72 Idaho 137, 237 P.2d 1058 (1951).

RESEARCH REFERENCES

Am. Jur. — 35A Am. Jur. 2d, Fixtures, § 92 et seq.

C.J.S. — 36A C.J.S., Fixtures, § 31 et seq.

A.L.R. — What amounts to permanent improvement within provision of lease against removal. 30 A.L.R.3d 998.

55-309. Ownership of street by abutter. — An owner of land bounded by a road or street is presumed to own to the center of the way, but the contrary may be shown.

History.

R.S., § 2883; reen. R.C. & C.L., § 3091; C.S., § 5359; I.C.A., § 54-309.

JUDICIAL DECISIONS

Cited in: *Ponderosa Homesite Lot Owners v. Garfield Bay Resort, Inc.*, 143 Idaho 407, 146 P.3d 673 (2006).

RESEARCH REFERENCES

Am. Jur. — 12 Am. Jur. 2d, Boundaries, §§ 29 to 45.

C.J.S. — 11 C.J.S., Boundaries, §§ 63 to 77.

55-310. Right to lateral and subjacent support. — Each cotermi-nous owner is entitled to the lateral and subjacent support which his land receives from the adjacent land, subject to the right of the owner of the adjoining land to make proper and usual excavations on the same for purposes of construction, on using ordinary care and skill, and taking reasonable precautions to sustain the land of the other, and giving previous reasonable notice to the other of his intention to make such excavation.

History.

R.S., § 2884; reen. R.C. & C.L., § 3092; C.S., § 5360; I.C.A., § 54-310.

JUDICIAL DECISIONS

Want of Care.

Excavation by owner on his own land, causing damage to a building on adjoining owner's land, without the knowledge of, or previous notice to, such adjoining owner, is evidence of want of care in doing the work. *Zilka v. Graham*, 26 Idaho 163, 141 P. 639 (1914).

Cited in: *Nampa & Meridian Irrigation Dist. v. Mussell*, 139 Idaho 28, 72 P.3d 868 (2003).

RESEARCH REFERENCES

Am. Jur. — 1 Am. Jur. 2d, Adjoining Landowners, § 44 et seq.

C.J.S. — 2 C.J.S., Adjoining Landowners, § 8 et seq.

55-311. Duties of tenant for life. — The owner of a life estate must keep the buildings and fences in repair from ordinary waste, and must pay the taxes and other annual charges, and a just proportion of extraordinary assessments benefiting the whole inheritance.

History.

R.S., § 2885; reen. R.C. & C.L., § 3093;
C.S., § 5361; I.C.A., § 54-311.

JUDICIAL DECISIONS

ANALYSIS

Category of waste.
Paving assessments.
Taxes.

Category of Waste.

Although this section does not expressly address waste of a lawn, trees and shrubs located on a life estate, the reference to "real property" in § 6-201 includes waste of the lawn, trees, and shrubs located on the life estate. *Kimrough v. Reed*, 130 Idaho 512, 943 P.2d 1232 (1997).

Paving Assessments.

Where life estate was left husband by wife and paving assessments were levied after death of wife, such assessment should be

borne proportionately by husband and remainderman. *Felton v. Anderton*, 67 Idaho 160, 174 P.2d 212 (1946).

Taxes.

Taxes paid by surviving husband cannot be charged against deceased wife's estate, since it was incumbent on the husband as owner of the life estate to pay them. *Felton v. Anderton*, 67 Idaho 160, 174 P.2d 212 (1946).

Cited in: *Tobias v. State Tax Comm'n*, 85 Idaho 250, 378 P.2d 628 (1963).

RESEARCH REFERENCES

A.L.R. — Duty as between life tenant and remainderman as respects payment of improvement assessments. 10 A.L.R.3d 1309.

55-312. Monuments and fences. — Coterminous owners are mutually bound equally to maintain:

1. The boundaries and monuments between them.
2. The fences between them, unless one of them chooses to let his land lie without fencing, in which case, if he afterward incloses it, he must refund to the other the just proportion of the value, at that time, of any division fence made by the latter.

History.

R.S., § 2886; reen. R.C. & C.L., § 3094;
C.S., § 5362; I.C.A., § 54-312.

STATUTORY NOTES

Cross References.

Erection, maintenance, and repair of partition fences, § 35-101 et seq.

RESEARCH REFERENCES

Am. Jur. — 35A Am. Jur. 2d, Fences, § 12.

C.J.S. — 36A C.J.S., Fences, § 23 et seq.

55-313. Relocation of access. — Where, for motor vehicle travel, any access which is less than a public dedication, has heretofore been or may hereafter be, constructed across private lands, the person or persons owning or controlling the private lands shall have the right at their own expense to change such access to any other part of the private lands, but such change must be made in such a manner as not to obstruct motor vehicle travel, or to otherwise injure any person or persons using or interested in such access.

History.

I.C., § 55-313, as added by 1985, ch. 252, § 1, p. 586.

JUDICIAL DECISIONS

ANALYSIS

Consent.

Relocation improper.

Consent.

This section unambiguously permitted the relocation of an access road, and did not require the consent of the neighboring dominant estate holders; the relocation did not constitute a taking and there was no genuine issue of material fact as to whether the estate holders sustained an injury. *Statewide Constr., Inc. v. Pietri*, 150 Idaho 423, 247 P.3d 650, overruled on other grounds, *Verska v. St. Alphonsus Med. Ctr.*, 151 Idaho 889, 265 P.3d 502 (2011).

Relocation Improper.

Where substantial and competent evidence was presented at trial that the slope of a relocated easement was steep enough to cause injury to those using the easement, property owners may be enjoined from relocating the easement. *Belstler v. Sheler*, 151 Idaho 819, 264 P.3d 926 (2011).

CHAPTER 4

PERSONAL PROPERTY

SECTION.

55-401. Conflict of laws.

55-402. Transfer and devolution of things in action.

55-403. Abandoned or unclaimed property in possession of sheriff or city police department — Sale at public auction.

SECTION.

55-403A. Disposal of firearms — Disposal of other items. [Repealed.]

55-404. Proceeds of sale — Disbursement.

55-405. Found personal property.

55-401. Conflict of laws. — If there is no law to the contrary in the

place where personal property is situated, it is deemed to follow the person of its owner and is governed by the law of his domicile.

History.

R.S., § 2890; reen. R.C. & C.L., § 3095;
C.S., § 5363; I.C.A., § 54-401.

JUDICIAL DECISIONS

ANALYSIS

Devolution of personal property.
Laws of succession controlling.
Marital domicile.

Devolution of Personal Property.

Shares of stock in corporation are personal property and descend according to the laws of the state which was the domicile of owner at time of his death, and certificates of shares of corporate stock, which constitute evidence of ownership, are transferred according to the laws of the state wherein corporation was organized. *State ex rel. Peterson v. Dunlap*, 28 Idaho 784, 156 P. 1141 (1916).

Barthel v. Johnston, 92 Idaho 94, 437 P.2d 366 (1968).

Marital Domicile.

Personal property acquired during coverture is governed and controlled by the law of the marital domicile. *Ashe v. Hurt*, 114 Idaho 70, 753 P.2d 281 (Ct. App. 1988), *aff'd*, 117 Idaho 266, 787 P.2d 252 (1990).

Where spouses held a brokerage account as joint tenants with right of survivorship while domiciled in California, and the husband terminated and then reestablished the account when the spouses were domiciled in Idaho, the property was subject to Idaho law. *Ashe v. Hurt*, 114 Idaho 70, 753 P.2d 281 (Ct. App. 1988), *aff'd*, 117 Idaho 266, 787 P.2d 252 (1990).

Laws of Succession Controlling.

French laws of succession controlled the distribution of bequests to residents of France of an Idaho testator who died intestate during the pendency of the administration of the testator's estate, leaving French heirs at law.

55-402. Transfer and devolution of things in action. — A thing in action arising out of the violation of a right of property, or out of an obligation, may be transferred by the owner. Upon the death of the owner it passes to his personal representatives, except where, in the cases provided in the Code of Civil Procedure, it passes to his devisees or successor in office.

History.

R.S., § 2891; reen. R.C. & C.L., § 3096;
C.S., § 5364; I.C.A., § 54-402.

STATUTORY NOTES

Compiler's Notes.

The Code of Civil Procedure, referred to in

this section, is a division of the Idaho Code consisting of Titles 1 through 13.

JUDICIAL DECISIONS

ANALYSIS

Contractual obligation of carrier.
Damages to mining ground assignable.
Fraud in stock sale.
Personal injuries.

Contractual Obligation of Carrier.

The provisions and procedures contem-

plated by § 11-507 are applicable to a cause of action belonging to judgment debtors against

their insurance carriers based on wrongful refusal by carriers to settle claims against judgment debtors within policy limits, which cause arises from the contractual obligation of the carriers and is a thing in action arising out of violation of an obligation and, thus, assignable under § 5-302 and this section. *Whitehead v. Van Leuven*, 347 F. Supp. 505 (D. Idaho 1972).

Damages to Mining Ground Assignable.

A cause of action for damages to mining ground from oil and grease nuisance is a thing in action, arising out of alleged violation of right of property, and assignable. *Idaho Gold Dredging Corp. v. Boise Payette Lumber Co.*, 54 Idaho 765, 37 P.2d 407 (1934), cert. denied,

299 U.S. 577, 57 S. Ct. 40, 81 L. Ed. 425 (1936).

Fraud in Stock Sale.

Cause of action for fraud in sale of stock survives. *MacLeod v. Stelle*, 43 Idaho 64, 249 P. 254 (1926).

Personal Injuries.

Injuries of personal nature which do not survive are such as injury to person, malicious prosecution, false imprisonment, libel, slander and the like; but injury which lessens estate of injured party does survive and is, thus, assignable. *MacLeod v. Stelle*, 43 Idaho 64, 249 P. 254 (1926).

Cited in: *Bonanza Motors, Inc. v. Webb*, 104 Idaho 234, 657 P.2d 1102 (Ct. App. 1983).

RESEARCH REFERENCES

Am. Jur. — 63C Am. Jur. 2d, Property, §§ 24, 25, 43 to 45.

C.J.S. — 73 C.J.S., Property, §§ 5,6.

55-403. Abandoned or unclaimed property in possession of sheriff or city police department — Sale at public auction. — (1) Except as otherwise provided in subsection (4) of this section, any personal property which has come into the possession or custody of the sheriff of any county in this state or the city police department of any city in this state by reason of the same having been abandoned, impounded or otherwise left with the sheriff or city police department, or if originally taken into custody under legal process, such property has been lawfully released or discharged from the attachment or other process under which it was taken into custody and which remains unclaimed or unredeemed by the owner or one entitled to possession thereof for more than six (6) months from the date of such abandonment, impoundment, leaving, or release from attachment or other process under which the same was originally taken into custody, as the case may be, shall be subject to sale by the sheriff or city police department at public auction for cash on not less than five (5) or more than ten (10) days' notice except as otherwise provided in subsection (2) of this section, the conduct and notice of which sale shall be given and had in conformity with sales on execution; provided, however, that prior to public auction, bicycles need only be unclaimed or unredeemed by the owner or one entitled to possession for more than ninety (90) days and that personal property with a fair market value of less than twenty-five dollars (\$25.00) need only be unclaimed or unredeemed by the owner or one entitled to possession for more than thirty (30) days.

(2) Whenever the sheriff or city police department has knowledge of the name and address of the owner or one entitled to possession of personal property, a copy of such notice of sale at public auction as provided in subsection (1) or of a bid for sale as provided in subsection (4) of this section, shall be mailed to such owner or one entitled to possession, with postage prepaid, at least fourteen (14) days prior to such sale.

(3) As many items of personal property may be noticed for sale and sold

at the same sale as the sheriff or city police department may deem advisable, and said property may be sold singly or in lots or as a whole as the sheriff or city police department may determine. The sheriff or city police department shall give a bill of sale to the highest bidder upon payment of the amount bid upon payment of the bid price.

(4)(a) Any firearm or ammunition that meets the established specifications for official law enforcement duty use and will be used for official law enforcement duty use and which has come into the possession or custody of the sheriff of any county in this state or the city police department of any city in this state by reason of the firearm or ammunition having been abandoned, impounded or otherwise acquired by the sheriff or city police department, or if originally released or discharged from the attachment or other process under which it was taken into custody and which remains unclaimed or unredeemed by the owner or person entitled to possession thereof for more than six (6) months from the date of such abandonment, impoundment, leaving or release from attachment or other process under which the firearm or ammunition was originally taken into custody, as the case may be, may be converted by the county sheriff or city police department in the county or city in which it was first acquired. A serial number record shall be maintained for all firearms thus converted, and such record shall include the description, acquisition and disposition for each firearm converted.

(b) Any firearm or ammunition not converted for official law enforcement duty use as provided in subsection (4)(a) of this section, where such firearm or ammunition may be lawfully possessed by a licensed firearm dealer, shall be subject to sale to a licensed firearm dealer by sealed or opened bids after notification as provided in subsection (2) of this section. If no sale is completed for the firearm or ammunition pursuant to this paragraph (b), the firearm or ammunition may be converted to public agency ownership for official law enforcement purposes provided an actual or appraised value is determined for each firearm or any ammunition converted. If the firearm or ammunition is not converted, or if following conversion the firearm or ammunition is deemed unusable or unsafe, the firearm or ammunition may be scrapped by melting or other method of destruction. The public agency shall maintain procedures and records as to the acquisition, serial number, location, use and final disposition of the firearm.

(c) Notwithstanding any other provision of law, a court shall direct the county sheriff or city police department to dispose of any firearm that has been used in the commission of a homicide in a manner the sheriff or city police department deems appropriate, provided however, this paragraph (c) shall not apply to a firearm confiscated or otherwise acquired pursuant to an action under section 18-4009, 18-4011 or 18-4012, Idaho Code.

(5) Any public agency that confiscates a firearm shall maintain a serial number record, including a record of the acquisition and disposition, of such firearm and shall provide the firearm to the sheriff or city police department in the county or city in which the confiscation takes place. The firearm shall thereafter be handled in accordance with the provisions of this section.

History.

§ 1, p. 940; am. 1986, ch. 136, § 1, p. 365; am. 1957, ch. 131, § 1, p. 221; am. 1978, ch. 357, 2005, ch. 217, § 2, p. 690.

55-403A. Disposal of firearms — Disposal of other items. [Repealed.]**STATUTORY NOTES****Compiler's Notes.**

This section, which comprised I.C., § 55-403A, as added by 1986, ch. 136, § 2, p. 365, was repealed by S.L. 2005, ch. 217, § 3.

55-404. Proceeds of sale — Disbursement. — Except as provided in section 55-405, Idaho Code, the proceeds of said sale shall be applied first to all costs assessed or incurred against the personal property so sold including any storage charges as keepers' fee and expenses of sale incurred by the sheriff or city police department, and the balance of such proceeds, if any, shall be kept by the sheriff or city police department in a separate fund for a period of one (1) year from the date of sale. Any person claiming title to, or ownership of, such proceeds by reason of ownership of such personal property at the time of sale by the sheriff or city police department shall make written application therefor to the sheriff or city police department. If satisfactory proof of such title or ownership is furnished within one (1) year of the receipt of such proceeds, then the said proceeds shall be delivered to the claimant. If no claim and proof is made before the expiration of one (1) year from the receipt of the proceeds, the same shall be paid by the sheriff to the county treasurer or by the city police department to the city clerk who shall credit the same to the general fund of the county or the city, as the case may be, and no claim therefor shall be thereafter considered.

History.

1957, ch. 131, § 2, p. 221; am. 1978, ch. 357, § 2, p. 940; am. 2002, ch. 131, § 1, p. 362.

55-405. Found personal property. — (1) Notwithstanding any other provision of law, any person who finds money or goods valued at one hundred dollars (\$100) or more, excepting firearms, explosives or other deadly weapons as identified in chapter 33, title 18, Idaho Code, shall, if the owner of the money or goods is unknown, give written notice of the finding within ten (10) days to the county clerk of the county in which the money or goods were found. Within twenty (20) days after the date of the finding, the person who finds such money or goods shall cause to be published in a newspaper of general circulation in the county a notice of the finding once each week for two (2) consecutive weeks. Each such notice shall state:

- (a) A general description of the money or goods found;
- (b) The address and telephone number of the county clerk's office; and
- (c) The final date by which such money or goods must be claimed.

(2) If no person establishes ownership of the money or goods prior to the expiration of three (3) months from the date of the notice to the county clerk, as provided in subsection (1) of this section, the person who found such money or goods shall be the rightful owner thereof.

- (3)(a) If any person who finds money or goods valued at one hundred dollars (\$100) or more, excepting firearms, explosives or other deadly weapons as identified in chapter 33, title 18, Idaho Code, fails to comply with the provisions of subsection (1) of this section, such person shall be liable to the county for the money or goods or for the value of such money or goods.
- (b) Upon forfeiture of the money or goods, or the value of such money or goods, as provided in this subsection, the county treasurer shall hold the money or goods or their value for the owner and shall publish in a newspaper of general circulation in the county a notice of the finding once each week for two (2) consecutive weeks. Each such notice shall state:
- (i) A general description of the money or goods found;
 - (ii) The address and telephone number of the county treasurer's office; and
 - (iii) The final date by which such money or goods must be claimed.
- (c) If the owner does not reclaim the money or goods within three (3) months after the date of first publication of the notice by the county treasurer, the owner forfeits any rights to the money or goods or the value thereof and:
- (i) If money, such money shall be placed in the general fund of the county for payment of the general operating expenses of the county; or
 - (ii) If goods, such goods shall be delivered to the sheriff of the county and sold at public auction as provided in section 55-403, Idaho Code. The proceeds of the sale of such goods shall be applied first to the costs of the sale and the remainder shall be placed in the general fund of the county for the payment of the general operating expenses of the county.
- (4) An owner of money or goods found by another person who establishes a claim to such money or goods within the time period specified in this section shall have restitution of such money or goods, or their value, upon payment to the finder or the county treasurer, as applicable, of all costs and charges incurred in the finding, giving of notice, and care and custody of such money or goods.
- (5) Nothing in this section shall be construed to affect the provisions of chapter 5, title 14, Idaho Code.

History.

I.C., § 55-405, as added by 2002, ch. 131,
§ 2, p. 362.

CHAPTER 5

TRANSFERS IN GENERAL

SECTION.

- 55-501. Transfer of possibilities.
55-502. Right of reentry is transferable.
55-503. Transfer by disseizee.
55-504. Oral transfers.
55-505. Transfer in writing — How designated.

SECTION.

- 55-506. Words of inheritance not required.
55-507. Grant effective on death without heirs.
55-508. Cointerests deemed to be in common.

55-501. Transfer of possibilities. — A mere possibility not coupled with an interest cannot be transferred.

History.

R.S., § 2900; reen. R.C. & C.L., § 3097;
C.S., § 5365; I.C.A., § 54-501.

STATUTORY NOTES

Cross References.

Possibility not a property interest, § 55-110.

JUDICIAL DECISIONS

Cited in: Hermann v. Brownell, 274 F.2d 842 (9th Cir. 1960); Mollendorf v. Derry, 95 Idaho 1, 501 P.2d 199 (1972).

55-502. Right of reentry is transferable. — A right of reentry or of repossession for breach of condition subsequent can be transferred.

History.

R.S., § 2901; reen. R.C. & C.L., § 3098;
C.S., § 5366; I.C.A., § 54-502.

RESEARCH REFERENCES

Am. Jur. — 28 Am. Jur. 2d, Estates, § 404.

55-503. Transfer by disseizee. — Any person claiming title to real property in the adverse possession of another may transfer it with the same effect as if in actual possession.

History.

1863, p. 528, § 33; R.S., § 2902; reen. R.C. & C.L., § 3099; C.S., § 5367; I.C.A., § 54-503.

RESEARCH REFERENCES

Am. Jur. — 3 Am. Jur. 2d, Adverse Possession, §§ 246 to 249, 253.

C.J.S. — 2 C.J.S., Adverse Possession, § 251.

55-504. Oral transfers. — A transfer may be made without writing, in every case in which a writing is not expressly required by statute.

History.

R.S., § 2903; reen. R.C. & C.L., § 3100;
C.S., § 5368; I.C.A., § 54-504.

STATUTORY NOTES

Cross References.

Real estate transfers required to be in writing, §§ 9-503, 9-504.

RESEARCH REFERENCES

Am. Jur. — 73 Am. Jur. 2d, Statute of Frauds, §§ 426 to 428. **C.J.S.** — 37 C.J.S., Frauds, Statute of, § 177.

55-505. Transfer in writing — How designated. — A transfer in writing is called a grant, or conveyance, or bill of sale.

History.

R.S., § 2904; reen. R.C. & C.L., § 3101;
C.S., § 5369; I.C.A., § 54-505.

55-506. Words of inheritance not required. — Words of inheritance or succession are not requisite to transfer a fee in real property.

History.

1863, p. 528, § 43; R.S., § 2905; reen. R.C. & C.L., § 3102; C.S., § 5370; I.C.A., § 54-506.

RESEARCH REFERENCES

Am. Jur. — 23 Am. Jur. 2d, Deeds, §§ 12 to 18. **C.J.S.** — 26A C.J.S., Deeds, § 303.

55-507. Grant effective on death without heirs. — Where a future interest is limited by a grant to take effect on the death of any person without heirs, or heirs of his body, or without issue, or in equivalent words, such words must be taken to mean successors, or issue living at the death of the person named as ancestor.

History.

1863, p. 528, § 44; R.S., § 2906; reen. R.C. & C.L., § 3103; C.S., § 5371; I.C.A., § 54-507.

JUDICIAL DECISIONS

Cited in: Hermann v. Brownell, 274 F.2d 842 (9th Cir. 1960); Mollendorf v. Derry, 95 Idaho 1, 501 P.2d 199 (1972).

55-508. Cointerests deemed to be in common. — Every interest in real estate granted or devised to two (2) or more persons, other than executors or trustees, as such constitutes a tenancy in common, unless expressly declared in the grant or devise to be otherwise.

History.

1863, p. 528, § 42; R.S., § 2907; reen. R.C. & C.L., § 3104; C.S., § 5372; I.C.A., § 54-508.

STATUTORY NOTES

Cross References.

Interests in common, § 55-104.

JUDICIAL DECISIONS

ANALYSIS

Abrogation of joint tenancy.
 Accounting between cotenants.
 Cotenants in water.
 Joint tenancy with right of survivorship.
 Presumption from possession.
 Use and possession.

Abrogation of Joint Tenancy.

Under this section and § 55-104, the common-law rule of joint tenancy has been abrogated, and every interest in real estate granted or devised to two or more persons, other than executors or trustees, constitutes a tenancy in common, unless expressly declared to the contrary. *Powell v. Powell*, 22 Idaho 531, 126 P. 1058 (1912).

Accounting Between Cotenants.

Where a cotenant leases or lets property for profit, he must account to his cotenant. *Washington County Irrigation Dist. v. Talboy*, 55 Idaho 382, 43 P.2d 943 (1935).

Cotenants in Water.

As respects the right of irrigation district to recover damages from other districts for diversion of unused stored water in reservoir, districts which were not using water on their own land, but who were distributing appropriations to land owners and collecting rent therefor, were cotenants. *Washington County Irrigation Dist. v. Talboy*, 55 Idaho 382, 43 P.2d 943 (1935).

In an irrigation district's action for damages for diversion of water from a reservoir by co-owner, co-owner could not profit by failure of the district to make final proof of completion of diversion work, or take from reservoir the district's share of water and distribute it to its consumers, where co-owner made its

proof of completion of diversion works for its share of water and same diversion works impounded water belonging to all parties. *Washington County Irrigation Dist. v. Talboy*, 55 Idaho 382, 43 P.2d 943 (1935).

Joint Tenancy with Right of Survivorship.

The mere fact that real property was purchased by the husband and wife with joint tenancy funds does not create a joint tenancy with right of survivorship in the realty. *Greene v. Cooke*, 96 Idaho 48, 524 P.2d 176 (1973).

Presumption from Possession.

The law presumes that possession of one cotenant is possession of all cotenants, and no presumption of abandonment arises. *Washington County Irrigation Dist. v. Talboy*, 55 Idaho 382, 43 P.2d 943 (1935).

Use and Possession.

A tenant in common is entitled to the use, benefit and possession of common property, provided he does not exclude his cotenants from like use and benefit. *Washington County Irrigation Dist. v. Talboy*, 55 Idaho 382, 43 P.2d 943 (1935).

Cited in: *Twin Falls Canal Co. v. American Falls Reservoir Dist. No. 2*, 49 F.2d 632 (D. Idaho 1931); *Zimmerman v. Spickelmire* (In re Spickelmire), 433 B.R. 792 (Bankr. D. Idaho 2010).

RESEARCH REFERENCES

Am. Jur. — 20 *Am. Jur. 2d*, Cotenancy and Joint Ownership, § 15 et seq.

C.J.S. — 48A *C.J.S.*, Joint Tenancy, § 1 et seq.

CHAPTER 6

TRANSFER OF REAL PROPERTY

SECTION.

55-601. Conveyance — How made.
 55-602. Conveyance by attorney in fact.
 55-603. Easements pass with property.
 55-604. Fee presumed to pass.
 55-605. Acquisition of subsequent title by grantor.
 55-606. Conclusiveness of conveyance — Bona fide purchasers.

SECTION.

55-607. Unauthorized grant by life tenant.
 55-608. Defeat of grant on condition subsequent.
 55-609. Grant on condition precedent.
 55-610. Grant of rents, reversions, or remainders.
 55-611. Grant of land bounded by highway.
 55-612. Covenants implied from grant.

SECTION.

55-613. Encumbrances defined.
55-614. Lineal and collateral warranties abolished.

SECTION.

55-615. Solar easements.

55-601. Conveyance — How made. — A conveyance of an estate in real property may be made by an instrument in writing, subscribed by the party disposing of the same, or by his agent thereunto authorized by writing. The name of the grantee and his complete mailing address must appear on such instrument.

History.

1863, p. 528, § 1; R.S., § 2920; reen. R.C. & C.L., § 3105; C.S., § 5373; I.C.A., § 54-601;

am. 1973, ch. 284, § 1, p. 600; am. 1989, ch. 105, § 1, p. 238.

STATUTORY NOTES

Cross References.

Death of vendor prior to conveyance, executor or administrator to make conveyance, § 15-3-715.

Partition of real estate, actions for, § 6-501 et seq.

Statute of frauds, §§ 9-505, 28-2-201.

Transfers of real property must be in writing, §§ 9-503, 9-504.

JUDICIAL DECISIONS

ANALYSIS

Acknowledgment.
Address of grantee.
Boundary agreements.
Conveyance to spouse.
Creation of easement.
Delivery of deed.
Equitable relief.
Mining privileges.
Necessity of description.
Prior recorded conveyance.

Acknowledgment.

Since acknowledgment is not required except for purpose of recording, lack of acknowledgment before a notary did not by itself vitiate deed. *Mollendorf v. Derry*, 95 Idaho 1, 501 P.2d 199 (1972).

Address of Grantee.

The identification of the city in the agreement as a municipal corporation is sufficient to satisfy the requirement of this section relating to disclosure of the address of a grantee, when the grantee is a municipality. *City of Kellogg v. Mission Mt. Interests Ltd.*, 135 Idaho 239, 16 P.3d 915 (2000).

The district court ruled that a grantee's mailing address on the deed was sufficient compliance with this section. *KEB Enters., L.P. v. Smedley*, 140 Idaho 746, 101 P.3d 690 (2004).

Warranty deed conveying a property to a corporation in an attempt to redeem after a

foreclosure was not ineffective based on an address requirement under this section, since it only applied to grantees. *Riley v. W. R. Holdings, LLC*, 143 Idaho 116, 138 P.3d 316 (2006).

Mortgage which a business gave to a husband and wife to secure debts the business allegedly owed the husband and wife was not valid under § 45-902 and this section, because the husband and wife did not include their complete mailing address on the instrument, or incorporate their address by reference to some other document. *Hopkins v. Thomason Farms, Inc. (In re Thomason)*, Case No. 03-42400, 2009 Bankr. LEXIS 1769 (Bankr. D. Idaho June 24, 2009).

Boundary Agreements.

Where the location of a true boundary line between coterminous owners is known to either of the parties, or is not uncertain, and is not in dispute, an oral agreement between

them purporting to establish another line as the boundary between their properties constitutes an attempt to convey real property in violation of the statute of frauds. *Downing v. Boehringer*, 82 Idaho 52, 349 P.2d 306 (1960).

Where the location of the true boundary line between coterminous owners is unknown, uncertain or in dispute, the coterminous owners may orally agree upon a boundary line, and the agreement, when possession is taken under it, will be binding upon the owners and those claiming under them and will not violate the statute of frauds for lack of a writing because it is not a conveyance of land, but merely the locating and establishing of the common boundary. *Hyde v. Lawson*, 94 Idaho 886, 499 P.2d 1242 (1972), overruled on other grounds, *Trappett v. Davis*, 102 Idaho 527, 633 P.2d 592 (1981).

Idaho case law, presently and historically, would permit application of the oral agreement doctrine where the location of the true line is unknown to both property owners, even though they may not entertain uncertain or disputatious feelings about it, because the doctrine of boundary by agreement promotes practical and stable boundaries, while concurrently preventing property owners from engaging in oral transactions to convey land. *Norwood v. Stevens*, 104 Idaho 44, 655 P.2d 938 (Ct. App. 1982).

In every case where a boundary by agreement is asserted, the underlying issue is whether such an agreement represents an oral conveyance of land in violation of the statute of frauds. The general rule of case law is that an agreement which arises from uncertainty or dispute over the location of a boundary is valid and does not constitute an oral conveyance of land. *Norwood v. Stevens*, 104 Idaho 44, 655 P.2d 938 (Ct. App. 1982).

Mediation agreement fell within the boundary agreement exception to statute of frauds, the elements of which are: (1) an uncertain or disputed boundary and (2) an express or implied agreement subsequently fixing that boundary. *Goodman v. Lothrop*, 143 Idaho 622, 151 P.3d 818 (2007).

Conveyance to spouse.

Where husband, during marriage, executed a quitclaim deed to ranch property to his wife as her separate property and in accordance with the requirements of this section, husband's testimony as to lack of consideration was inadmissible and his evidence insufficient to rebut the presumption of § 32-906; therefore, finding that property was wife's separate property was upheld. *Bliss v. Bliss*, 127 Idaho 170, 898 P.2d 1081 (1995).

Creation of Easement.

Escrow agreement in which buyer promised to pay a certain sum to seller in return for two acres and various interests in the land includ-

ing nonexclusive use of airport was a conveyance within the meaning of § 55-813. When two recorded conveyances purport to convey conflicting interests in real property, the conveyance first recorded controls. Thus, where escrow agreement was recorded in 1989 and deed for sale of remainder of land owned by seller was recorded in 1991, the escrow agreement entitled buyer of the two acres to an easement of nonexclusive use of the airport even though the easement for nonexclusive use of the airport had been omitted from the deed for sale of the two acres. *West v. Bowen*, 127 Idaho 128, 898 P.2d 59 (1995).

Delivery of Deed.

Before a deed can operate as a valid transfer of title, there must be a delivery of the instrument and it must be effected during the life of the grantor. *Crenshaw v. Crenshaw*, 68 Idaho 470, 199 P.2d 264 (1948).

It is essential to the delivery of a deed that there is a giving of the deed by the grantor and a receiving of it by the grantee with a mutual intention to pass title from the one to the other. *Crenshaw v. Crenshaw*, 68 Idaho 470, 199 P.2d 264 (1948).

Record of survey constituted a properly recorded conveyance; where it purported to transfer the disputed property, it created, alienated, mortgaged or encumbered the title of both lots, it was in writing, it contained a sufficient description of the property, it contained the name of the grantee, and it clearly indicated the legal description of the subject property and the lots. *Adams v. Anderson*, 142 Idaho 208, 127 P.3d 111 (2005).

Equitable Relief.

Failure to comply with this section does not deprive a taxpayer of the right to equitable relief. *Giacobbi v. Hall*, 109 Idaho 293, 707 P.2d 404 (1985).

Mining Privileges.

Grant of mining privileges entered into by manager of company without authority expressed by company will be held a binding lease when it has been ratified by acceptance of royalties. *Page v. Savage*, 42 Idaho 458, 246 P. 304 (1926).

Necessity of Description.

Where two resolutions by a county board of commissioners contained no description of the property purported to be conveyed, they were insufficient to pass title. *Worley Hwy. Dist. v. Kootenai County*, 98 Idaho 925, 576 P.2d 206 (1978).

Prior Recorded Conveyance.

The bona fide purchaser doctrine does not protect a subsequent purchaser from prior recorded conveyances. Rather, it merely allows a subsequent good faith purchaser to void a prior unrecorded conveyance by record-

ing first. West v. Bowen, 127 Idaho 128, 898 P.2d 59 (1995).

Cited in: First Nat'l Bank v. Williams, 2 Idaho (Hasb.) 670, 23 P. 552 (1890); Federal Land Bank v. Union Cent. Life Ins. Co., 54 Idaho 161, 29 P.2d 1009 (1934); Old Stone

Capital Corp. v. John Hoene Implement Corp., 647 F. Supp. 916 (D. Idaho 1986); Chavez v. Barrus, 146 Idaho 212, 192 P.3d 1036 (2008); Bagley v. Thomason, 149 Idaho 799, 241 P.3d 972 (2010).

RESEARCH REFERENCES

Am. Jur. — 23 Am. Jur. 2d, Deeds, §§ 16 to 19.

C.J.S. — 26A C.J.S., Deeds, §§ 60 to 70.

55-602. Conveyance by attorney in fact. — When an attorney in fact executes an instrument transferring an estate in real property, he must subscribe the name of his principal to it, and his own name as attorney in fact.

History.

R.S., § 2925; reen. R.C. & C.L., § 3110; C.S., § 5374; I.C.A., § 54-602.

JUDICIAL DECISIONS

Cited in: Andersen v. Burns, 96 Idaho 336, 528 P.2d 680 (1974).

RESEARCH REFERENCES

Am. Jur. — 23 Am. Jur. 2d, Deeds, § 19.

C.J.S. — 26A C.J.S., Deeds, §§ 60 to 70; 73 C.J.S., Property, §§ 17, 19.

55-603. Easements pass with property. — A transfer of real property passes all easements attached thereto, and creates in favor thereof an easement to use other real property of the person whose estate is transferred, in the same manner and to the same extent as such property was obviously and permanently used by the person whose estate is transferred, for the benefit thereof, at the time when the transfer was agreed upon or completed.

History.

R.S., § 2926; reen. R.C. & C.L., § 3111; C.S., § 5375; I.C.A., § 54-603.

JUDICIAL DECISIONS

ANALYSIS

Hereditaments.
Mortgage.
Notice of easement.
Water rights.

Hereditaments.

Real property includes that which is appurtenant to the land. It includes all easements

attached to the land; and it includes hereditaments, whether corporeal or incorporeal, such as easements, and every interest in land.

Hughes v. State, 80 Idaho 286, 328 P.2d 397 (1958).

Mortgage.

Mortgage was held to have passed all easements and appurtenances at time belonging to lands. *Union Cent. Life Ins. Co. v. Albrethsen*, 50 Idaho 196, 294 P. 842 (1930).

Notice of Easement.

Where, pursuant to an oral agreement, part of a tract of city property was conveyed to grantee and building was constructed on entire tract, and the upper floors of the portion of the building which was located on the grantee's property continuously after the erection of the building were used for hotel purpose, and were reached by sole means of access through lobby and stairs located on part of tract retained by grantor, the successors in interest of grantor were charged with notice of existence of easement which was

apparent from a mere examination of the premises. *Eagle Rock Corp. v. Idamont Hotel Co.*, 59 Idaho 413, 85 P.2d 242 (1938).

Water Rights.

By transfer of tract of land on which waters obtained by water right have been used by person whose estate is transferred, purchaser acquires right to continue use and enjoyment of such water right as the same had been previously used and enjoyed by owner. *Russell v. Irish*, 20 Idaho 194, 118 P. 501 (1911).

General clause conveying "appurtenances" is sufficient to transfer appurtenant water right not specifically described in deed. *Johnson v. Gustafson*, 49 Idaho 376, 288 P. 427 (1930).

Cited in: *Bothwell v. Keefer*, 53 Idaho 658, 27 P.2d 65 (1933); *Cordwell v. Smith*, 105 Idaho 71, 665 P.2d 1081 (Ct. App. 1983); *Davis v. Gage*, 106 Idaho 735, 682 P.2d 1282 (Ct. App. 1984).

RESEARCH REFERENCES

Am. Jur. — 23 Am. Jur. 2d, Deeds, § 222.

C.J.S. — 26A C.J.S., Deeds, §§ 285 to 288.

55-604. Fee presumed to pass. — A fee simple title is presumed to be intended to pass by a grant of real property unless it appears from the grant that a lesser estate was intended.

History.

1863, p. 528, § 43; R.S., § 2927; reen. R.C.

& C.L., § 3112; C.S., § 5376; I.C.A., § 54-604.

JUDICIAL DECISIONS

ANALYSIS

Easements.
Equitable title.
Evidence.
Mortgage.

Easements.

In a dedication of streets and alleys to use of the public, it will not be presumed that owner granted a greater estate than that which the public requires; it will not be presumed that he intended to convey to the city, in fee, title to the streets. *Shaw v. Johnston*, 17 Idaho 676, 107 P. 399 (1910).

Equitable Title.

Grantors' quitclaim deed passed to grantees their equitable title in land in which they held only desert entry rights. *Scogings v. Andreason*, 91 Idaho 176, 418 P.2d 273 (1966).

Evidence.

Evidence that after decedent grantor executed and delivered deed to plaintiff-grantee requesting that grantee have it recorded, de-

cedent continued to live on one lot and collect rents from another was not enough to uphold trial court's fact finding that decedent did not intend that a fee simple title should pass immediately. *Hartley v. Stibor*, 96 Idaho 157, 525 P.2d 352 (1974).

Where the deeds clearly and unambiguously conveyed fee simple title to the railroad, the mere presence of the term "right of way" on the deeds' cover sheets does not, by itself, create an ambiguity in what are otherwise clearly worded conveyances. *C & G, Inc. v. Rule*, 135 Idaho 763, 25 P.3d 76 (2001).

Mortgage.

A warranty deed along with an agreement to reconvey the property in the future was an outright conveyance rather than a mortgage, where the transaction did not secure any

debt. Defendants' predecessors could reacquire the property by paying certain sums to plaintiffs' predecessors, but they were not obligated to make those payments, and amount paid by plaintiffs' predecessors was the fair market value of the real property at the time of the transaction. *Hogg v. Wolske*, 142 Idaho 549, 130 P.3d 1087 (2006).

RESEARCH REFERENCES

C.J.S. — 26A C.J.S., Deeds, §§ 301 to 303; 73 C.J.S., Property, § 55 et seq.

55-605. Acquisition of subsequent title by grantor. — Where a person purports by proper instrument to convey or grant real property in fee simple, and subsequently acquires any title or claim of title thereto, the same passes by operation of law to the grantee or his successors.

History. & C.L., § 3113; C.S., § 5377; I.C.A., § 54-1863, p. 528, § 32; R.S., § 2928; reen. R.C. 605.

JUDICIAL DECISIONS

ANALYSIS

Grantee's mortgage for purchase money.
No title.

Grantee's Mortgage for Purchase Money.

Grantors' quitclaim deed passed to grantees their equitable title in land in which they held only desert entry rights and grantees' mortgage to grantors for purchase money was valid as between the parties even though the legal title was acquired after the land was mortgaged. *Scogings v. Andreason*, 91 Idaho 176, 418 P.2d 273 (1966).

No Title.

This section only requires that the person purport to convey the property, not that the person actually have title to the property when giving the deed, and the doctrine of

after-acquired title presupposes that the person giving the deed did not have title when purporting to convey the property; because the record indicated that the mortgage company did not have title to the real property when it filed this lawsuit, it was error to grant the company's motion for summary judgment. *PHH Mortg. Servs. Corp. v. Perreira*, 146 Idaho 631, 200 P.3d 1180 (2009).

Cited in: *Brooks v. Jensen*, 75 Idaho 201, 270 P.2d 425 (1954); *Gardner v. Fliegel*, 92 Idaho 767, 450 P.2d 990 (1969); *State ex rel. Moore v. Scroggie*, 109 Idaho 32, 704 P.2d 364 (Ct. App. 1985).

RESEARCH REFERENCES

Am. Jur. — 23 Am. Jur. 2d, Deeds, §§ 247 to 249.

C.J.S. — 26A C.J.S., Deeds, § 281.

55-606. Conclusiveness of conveyance — Bona fide purchasers. — Every grant or conveyance of an estate in real property is conclusive against the grantor, also against every one subsequently claiming under him, except a purchaser or encumbrancer, who in good faith, and for a valuable consideration, acquires a title or lien by an instrument or valid judgment lien that is first duly recorded.

History.

R.S., § 2929; reen. R.C. & C.L., § 3114;

C.S., § 5378; I.C.A., § 54-606; am. 1989, ch. 107, § 1, p. 247.

STATUTORY NOTES

Cross References.

Recordation, § 55-801 et seq.

Effective Dates.

Section 2 of S.L. 1989, ch. 107 declared an emergency. Approved March 27, 1989.

JUDICIAL DECISIONS

ANALYSIS

Actual knowledge.

Constructive notice.

Evidence.

Instrument.

Knowledge of prior option agreement.

Knowledge of transfer.

Shelter rule.

Unrecorded deed.

Unrecorded mortgage.

When record effective.

Actual Knowledge.

When a subsequent encumbrancer or purchaser has actual knowledge of a prior interest, it makes no difference whether the prior interest was properly acknowledged and recorded. *Farm Bureau Fin. Co. v. Carney*, 100 Idaho 745, 605 P.2d 509 (1980).

According to Idaho's recording statutes, a mortgage recorded first in time had priority against all other subsequent mortgagees where the title company executed and recorded its mortgage first (twelve days before the landowners) and the owners were not good faith purchasers because they knew of the company's mortgage, such that because the owners did not record first and had at least constructive notice of the company's mortgage, the company's mortgage took priority. *Estate of Skvorak v. Sec. Union Title Ins. Co.*, 140 Idaho 16, 89 P.3d 856 (2004).

Constructive Notice.

A deed notarized by husband of grantee does not give constructive notice to anyone though recorded, but is valid as between the parties. *Johnson v. Casper*, 75 Idaho 256, 270 P.2d 1012 (1954).

Evidence.

The fact that after decedent executed and delivered deed to plaintiff-grantee requesting that grantee have it recorded, decedent continued to live on one lot and collect rents from another was not enough to uphold trial court's fact finding that decedent did not intend that a fee simple title should pass immediately. *Hartley v. Stibor*, 96 Idaho 157, 525 P.2d 352 (1974).

Instrument.

Unrecorded deed prevailed even though a creditor's judgment was recorded first, be-

cause the judgment was not an "instrument" under this section. While the deed was an "invalid" deed — one not acknowledged and not recorded — it was, however, still valid as between the parties and took priority over the judgment. *Siegel Mobile Home Group, Inc. v. Bowen*, 114 Idaho 531, 757 P.2d 1250 (Ct. App. 1988).

Knowledge of Prior Option Agreement.

Owner of easement across 42-foot strip of land could not claim to be a bona fide purchaser based on vendors' agreement to devise the strip to easement owner upon the death of surviving spouse, where, prior to parting with consideration for vendors' promise to convey the strip in the future, easement owner had acquired actual knowledge of an earlier unrecorded contract wherein vendors granted defendants the preemptive right of first refusal if the strip was offered for sale. *Garmo v. Clanton*, 97 Idaho 696, 551 P.2d 1332 (1976).

Knowledge of Transfer.

Judgment creditor, who at time of execution knew that property formerly in name of debtor had been transferred to a third party was not entitled to sell property under levy. *Johnson v. Casper*, 75 Idaho 256, 270 P.2d 1012 (1954).

Shelter Rule.

The "Shelter Rule" provides that one who is not a bona fide purchaser, but who takes an interest in property from a bona fide purchaser, may be sheltered in the latter's protective status; therefore, a bona fide purchaser can transfer good title to a person who has notice of a prior adverse equity or right. *Sun Valley Land & Minerals, Inc. v. Burt*, 123 Idaho 862, 853 P.2d 607 (Ct. App. 1993).

There are two exceptions to the "Shelter Rule": (1) where the interest held by a bona fide purchaser was obtained from a grantor with notice of an outstanding interest in the property, and the property is reconveyed to the grantor; and (2) when the property is reconveyed from a bona fide purchaser to a person guilty of a violation of a trust or duty with respect to the property. *Sun Valley Land & Minerals, Inc. v. Burt*, 123 Idaho 862, 853 P.2d 607 (Ct. App. 1993).

Unrecorded Deed.

Prior unrecorded deed prevails over subsequent judgment. *Johnson v. Casper*, 75 Idaho 256, 270 P.2d 1012 (1954).

Unrecorded Mortgage.

Lien of unrecorded mortgages was held not

superior to lien of mechanic furnishing labor without knowledge of mortgages. *Poynter v. Fargo*, 48 Idaho 271, 281 P. 1111 (1929).

When Record Effective.

A duly recorded interest is effective against prior unrecorded interests only where the recorded interest is taken for a valuable consideration and without knowledge, either actual or constructive, that unrecorded interests exist. *Farm Bureau Fin. Co. v. Carney*, 100 Idaho 745, 605 P.2d 509 (1980).

Cited in: *Surety Life Ins. Co. v. Rose Chapel Mortuary, Inc.*, 95 Idaho 599, 514 P.2d 594 (1973); *Lind v. Perkins*, 107 Idaho 901, 693 P.2d 1103 (Ct. App. 1984); *Hall v. Hall*, 112 Idaho 641, 734 P.2d 666 (Ct. App. 1987).

RESEARCH REFERENCES

Am. Jur. — 66 Am. Jur. 2d, Records and Recording Laws, § 71 et seq.

C.J.S. — 26A C.J.S., Deeds, §§ 159 to 163.

55-607. Unauthorized grant by life tenant. — A grant made by the owner of an estate for life or years, purporting to transfer a greater estate than he could lawfully transfer, does not work a forfeiture of his estate, but passes to the grantee all the estate which the grantor could lawfully transfer.

History.

R.S., § 2930; reen. R.C. & C.L., § 3115; C.S., § 5379; I.C.A., § 54-607.

RESEARCH REFERENCES

C.J.S. — 26A C.J.S., Deeds, § 277.

55-608. Defeat of grant on condition subsequent. — Where a grant is made upon condition subsequent, and is subsequently defeated by the nonperformance of the condition, the person otherwise entitled to hold under the grant must reconvey the property to the grantor or his successors, by grant duly acknowledged for record.

History.

R.S., § 2931; reen. R.C. & C.L., § 3116; C.S., § 5380; I.C.A., § 54-608.

RESEARCH REFERENCES

C.J.S. — 26A C.J.S., Deeds, §§ 377 et seq.

55-609. Grant on condition precedent. — An instrument purporting to be a grant of real property, to take effect upon condition precedent, does not pass the estate upon the performance of the condition. Such instrument is an executory contract for the conveyance of the property. Upon compliance

with the condition, the grantee is entitled to a grant or conveyance, from the grantor or his successors, for the property, duly acknowledged for record.

History.

R.S., § 2932; reen. R.C. & C.L., § 3117;
C.S., § 5381; I.C.A., § 54-609.

JUDICIAL DECISIONS

Escrows.

This section relates to contract of sale and has no application to deed deposited in es-

crow. *Gardiner v. Gardiner*, 36 Idaho 664, 214 P. 219 (1923).

RESEARCH REFERENCES

C.J.S. — 26A C.J.S., Deeds, § 377 et seq.

55-610. Grant of rents, reversions, or remainders. — Grants of rents or of reversions or of remainders are good and effectual without attornments of the tenants; but no tenant who, before notice of the grant, has paid rent to the grantor, must suffer any damage thereby.

History.

1863, p. 528, § 47; R.S., § 2933; reen. R.C. & C.L., § 3118; C.S., § 5382; I.C.A., § 54-610.

RESEARCH REFERENCES

Am. Jur. — 49 Am. Jur. 2d, Landlord and Tenant, § 891 et seq.

55-611. Grant of land bounded by highway. — A transfer of land, bounded by a highway, passes the title of the person whose estate is transferred to the soil of the highway in front, to the center thereof, unless a different intent appears from the grant.

History.

R.S., § 2934; reen. R.C. & C.L., § 3119;
C.S., § 5383; I.C.A., § 54-611.

STATUTORY NOTES

Cross References.

Ownership of street by abutter, § 55-309.

RESEARCH REFERENCES

Am. Jur. — 12 Am. Jur. 2d, Boundaries, §§ 29 to 45.

C.J.S. — 11 C.J.S., Boundaries, §§ 63 to 77.

55-612. Covenants implied from grant. — From the use of the word "grant" in any conveyance by which an estate of inheritance, possessory right, or fee simple is to be passed, the following covenants, and none other, on the part of the grantor, for himself and his heirs, to the grantee, his heirs

and assigns, are implied, unless restrained by express terms contained in such conveyance:

1. That previous to the time of the execution of such conveyance, the grantor has not conveyed the same estate, or any right, title or interest therein, to any person other than the grantee.

2. That such estate is at the time of the execution of such conveyance free from encumbrances done, made or suffered by the grantor, or any person claiming under him. Such covenants may be sued upon in the same manner as if they had been expressly inserted in the conveyance.

History.

1863, p. 528, § 50; R.S., § 2935; reen. R.C.

& C.L., § 3120; C.S., § 5384; I.C.A., § 54-612.

JUDICIAL DECISIONS

ANALYSIS

Encumbrances.

Grant.

Implied and express covenants.

Not encumbrances.

Notice of encumbrance.

Suffered.

Encumbrances.

Encumbrance is not contemplated by this section, unless grantor was under personal obligation to pay it. *Polak v. Mattson*, 22 Idaho 727, 128 P. 89 (1912).

Unless grantee agrees to pay taxes levied prior to his acquisition of title, same are not encumbrances herein. *Polak v. Mattson*, 22 Idaho 727, 128 P. 89 (1912).

This section implies that, when the word "grant" is used in a deed, the estate conveyed is free from encumbrances of the grantor or any one claiming under him. Where the claimant of a mechanic's lien on the premises for services and materials furnished under a contract conveyed, by a grant deed, such premises to the party against whom the lien was asserted, the claim of lien for services and materials rendered prior to the delivery of the deed was "merged" in the deed which rendered the claim unenforceable in the absence of a reservation of the title. *Finlayson v. Waller*, 64 Idaho 618, 134 P.2d 1069 (1943).

The definition of "encumbrance" does not include an alleged restriction on the use of the property. *Middlekauff v. Lake Cascade, Inc.*, 103 Idaho 832, 654 P.2d 1385 (1982).

Grant.

The word "grant" in a conveyance is a covenant that the estate so conveyed is, at the time of the execution thereof, free from encumbrances done, made or suffered by grantor or any person claiming under him, but is not a warranty of title or a covenant of quiet enjoyment against encumbrances. *Warren v. Stoddart*, 6 Idaho 692, 59 P. 540 (1899);

Moore v. Pooley, 17 Idaho 57, 104 P. 898 (1909).

Covenant of seizin is not implied from use of word "grant" in deed. *Bliss Townsite Co. v. Morris-Roberts Co.*, 33 Idaho 110, 190 P. 1028 (1920).

Implied warranty against encumbrances from use of word "grant" is a covenant running with the land. *Brinton v. Johnson*, 35 Idaho 656, 208 P. 1028 (1922); *Carssow v. Brinton*, 35 Idaho 667, 208 P. 1031 (1922).

Word "grant" in a deed of conveyance implies a covenant against an encumbrance of a tax lien "done, made, or suffered" by grantor which runs with the land. *Brinton v. Johnson*, 35 Idaho 656, 208 P. 1028 (1922); *Carssow v. Brinton*, 35 Idaho 667, 208 P. 1031 (1922).

Implied and Express Covenants.

Implied and express covenants should be construed together, unless it clearly appears that the express covenant was intended to restrict the implied. *Polak v. Mattson*, 22 Idaho 727, 128 P. 89 (1912).

Not Encumbrances.

Since the alleged promise of seller that certain property adjoining that of purchasers would be reserved for common use was not a lien or encumbrance, order of bankruptcy court authorizing sale of part of such property "free and clear of all liens and encumbrances" did not put the purchasers on notice of fraud and did not start the statute of limitations running on purchasers' action to enforce the promise. *Middlekauff v. Lake Cascade, Inc.*, 103 Idaho 832, 654 P.2d 1385 (1982).

Notice of Encumbrance.

Grantor was not liable on warranties of title, where grantee knew of the existing liens which were charges against the land, but not against grantor personally. *Urich v. McPherson*, 27 Idaho 319, 149 P. 295 (1915).

Evidence required finding that mortgagee of ranch and water right, originally appurtenant thereto, acquired right in good faith, without actual or constructive notice of claim of another mortgagee under prior mortgage, given by mortgagor on different ranch. *Federal Land Bank v. Union Cent. Life Ins. Co.*, 54 Idaho 161, 29 P.2d 1009 (1934).

Suffered.

"Suffered," as used in this section, implies reasonable control and it cannot be held to apply to an encumbrance not caused by the act of the party nor within his power to prevent. *Polak v. Mattson*, 22 Idaho 727, 128 P. 89 (1912).

Cited in: *Blaine County Nat'l Bank v. Jones*, 45 Idaho 358, 262 P. 509 (1927); *Bannock Title Co. v. Lindsey*, 86 Idaho 583, 388 P.2d 1011 (1963); *Middlekauff v. Lake Cascade, Inc.*, 110 Idaho 909, 719 P.2d 1169 (1986).

RESEARCH REFERENCES

Am. Jur. — 20 *Am. Jur.* 2d, *Covenants, Conditions, and Restrictions*, § 54 et seq.

55-613. Encumbrances defined. — The term "encumbrances" includes taxes, assessments, and all liens upon real property.

History.

R.S., § 2936; *reen. R.C. & C.L.*, § 3121; *C.S.*, § 5385; *I.C.A.*, § 54-613.

JUDICIAL DECISIONS**ANALYSIS**

Encumbrances.

Not encumbrances.

Encumbrances.

Private roadway. *Newmyer v. Roush*, 21 Idaho 106, 120 P. 464 (1912).

Mechanics' liens. *Urich v. McPherson*, 27 Idaho 319, 149 P. 295 (1915).

Tax lien attaching while party is owner of property. *Brinton v. Johnson*, 35 Idaho 656, 208 P. 1028 (1922); *Carssow v. Brinton*, 35 Idaho 667, 208 P. 1031 (1922).

Not Encumbrances.

Canal rights of way. *Schurger v. Moorman*, 20 Idaho 97, 117 P. 122 (1911).

Public highway. *Newmyer v. Roush*, 21 Idaho 106, 120 P. 464 (1912).

Taxes prior to ownership. *Polak v. Mattson*, 22 Idaho 727, 128 P. 89 (1912).

Lien for local improvement is not considered an encumbrance from which title conveyed by tax deed is free, when it attaches subsequent to the assessment for taxes on

account of which the property was sold. *Hunt v. City of St. Maries*, 44 Idaho 700, 260 P. 155 (1927).

Water contract appurtenant to all lots in block, and under which canal company need not deliver water to any lots unless maintenance charges against all were paid, is not an encumbrance relieving purchasers of some lots from obligation on contract of purchase. *Hunt v. Bremer*, 47 Idaho 490, 276 P. 964 (1929).

Encumbrance that did not fit within the categories of the statute had to be a right, interest, or hostile title relating to the land; the court did not extend the traditional scope of a general warranty against encumbrances in such a manner as to include zoning matters. *Hoffer v. Callister*, 137 Idaho 291, 47 P.3d 1261 (2002).

Cited in: *Bannock Title Co. v. Lindsey*, 86 Idaho 583, 388 P.2d 1011 (1963).

RESEARCH REFERENCES

Am. Jur. — 23 *Am. Jur.* 2d, *Deeds*, § 248.

55-614. Lineal and collateral warranties abolished. — Lineal and collateral warranties, with all their incidents, are abolished; but the heirs and devisees of every person who has made any covenant or agreement in reference to the title of, in, or to any real property, are answerable upon such covenant or agreement to the extent of the land descended or devised to them, in the cases and in the manner prescribed by law.

History.

1863, p. 528, § 49; R.S., § 2937; reen. R.C. & C.L., § 3122; C.S., § 5386; I.C.A., 54-614.

55-615. Solar easements. — (1) An easement, as defined in section 50-1301, Idaho Code, may be obtained for the purpose of exposure of a solar energy device to sunlight. Such easement shall be known as a solar easement, shall be created in writing, and shall be subject to the same conveyancing and instrument recording requirements as other easements.

(2) Any instrument creating a solar easement shall include, but the contents shall not be limited to:

(a) The vertical and horizontal angles, expressed in degrees, at which the solar easement extends over the real property subject to the solar easement;

(b) Any terms or conditions or both under which the solar easement is granted or will be terminated;

(c) Any provisions for compensation of the owner of the property benefiting from the solar easement in the event of interference with the enjoyment of the solar easement or compensation of the owner of the property subject to the solar easement for maintaining the solar easement.

(3) A solar easement shall be presumed to be attached to the real property on which it was first created, and shall be deemed to pass with the property when title is transferred to another owner as prescribed in section 55-603, Idaho Code.

History.

I.C., § 55-615, as added by 1978, ch. 294, § 1, p. 741.

STATUTORY NOTES

Effective Dates.

Section 2 of S.L. 1978, ch. 294 declared an emergency. Approved March 29, 1978.

CHAPTER 7

ACKNOWLEDGMENTS

SECTION.

55-701. By whom taken — Any place within state.

55-702. By whom taken — Within limited territory.

SECTION.

55-703. By whom taken — Outside of state.

55-704. By whom taken — Outside United States.

55-705. By whom taken — Members of the

SECTION.

- armed forces.
- 55-706. Acknowledgment before deputies.
- 55-707. Requisites of acknowledgment.
- 55-707A. Acknowledgment by entity on behalf of another entity.
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- 55-709. Certificate of acknowledgment.
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- 55-711. Form of certificate — Acknowledgment by corporation.
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- 55-712. Form of certificate — Acknowledgment by attorney.
- 55-712A. Form of certificate — Acknowledgment by person signing by mark.
- 55-712B. Form of certificate — Acknowledgment by person physically unable to sign or sign by mark.
- 55-713. Form of certificate — Acknowledgment by official or fiduciary.
- 55-714. Form of certificate — Acknowledgment by partnership.

SECTION.

- 55-715. Form of certificate — Acknowledgment by state or political subdivision.
- 55-716. Authentication of certificate.
- 55-717. Certificate of justice — Authentication. [Repealed.]
- 55-718. Proof of execution.
- 55-719. Identity of witness must be known or proved.
- 55-720. Proof of identity of grantor.
- 55-721. Proof of instrument by handwriting.
- 55-722. Proof of instrument by handwriting — What evidence must prove.
- 55-723. Certificate of proof.
- 55-724. Authority of officers taking proof.
- 55-725. Correction of defective certificate.
- 55-726. Action to prove instrument.
- 55-727. Judgment entitles instrument to record.
- 55-728. Prior instruments not affected.
- 55-729. Record of prior instruments.
- 55-730. Record of prior instruments as notice.

55-701. By whom taken — Any place within state. — The proof or acknowledgment of an instrument may be made at any place within this state, before a justice or clerk of the Supreme Court, or a notary public, or the secretary of state, or United States commissioner.

History.

1863, p. 528, § 4; R.S., § 2950; reen. R.C. & C.L., § 3123; C.S., § 5387; am. 1929, ch. 64,

§ 1, p. 94; I.C.A., § 54-701; am. 1943, ch. 74, § 2, p. 156.

STATUTORY NOTES**Cross References.**

Acknowledgments necessary to authorize record, § 55-805.

Additional authority for clerk of Supreme Court to take acknowledgments, § 1-407.

Fee of clerk of district court for taking acknowledgments, § 31-3201.

Fee of clerk of Supreme Court for taking acknowledgments, § 1-402.

Judicial officers may take acknowledgments, § 1-1903.

JUDICIAL DECISIONS

Cited in: *Fredricksen v. Fullmer*, 74 Idaho 164, 258 P.2d 1155 (1953).

RESEARCH REFERENCES

Am. Jur. — 1 Am. Jur. 2d, Acknowledgments, § 9 et seq.

C.J.S. — 1A C.J.S., Acknowledgments, § 24 et seq.

A.L.R. — Testator's acknowledgement of

signature from his conduct and the surrounding circumstances. 7 A.L.R.3d 317.

Disqualification of attorney, otherwise qualified, to take oath or acknowledgment from client. 21 A.L.R.3d 483.

55-702. By whom taken — Within limited territory. — The proof or acknowledgment of an instrument may be made in this state within the city, county or district for which the officer was elected or appointed, before either:

- (1) A judge or a clerk of a court of record; or
- (2) A county recorder.

History.

1863, p. 528, § 4; R.S., § 2951; reen. R.C. & C.L., § 3124; C.S., § 5388; am. 1929, ch. 64,

§ 2, p. 94; I.C.A., § 54-702; am. 2012, ch. 20, § 23, p. 66.

STATUTORY NOTES

Cross References.

Officers who may take acknowledgments: Judicial officers, § 1-1903, Notaries, § 51-107.

Amendments.

The 2012 amendment, by ch. 20, deleted former subsection 3., which read: "A justice of the peace."

55-703. By whom taken — Outside of state. — The proof or acknowledgment of an instrument may be made without this state, but within the United States, and within the jurisdiction of the officer, before either:

1. A justice, judge or clerk of any court of record of the United States; or,
2. A justice, judge or clerk of any court of record of any state or territory; or,
3. A commissioner appointed by the governor of this state for that purpose; or,
4. A notary public; or,
5. Any other officer of the state or territory where the acknowledgment is made, authorized by its laws to take such proof or acknowledgment.

History.

1863, p. 528, § 4; R.S., § 2952; reen. R.C. & C.L., § 3125; C.S., § 5389; I.C.A., § 54-703.

JUDICIAL DECISIONS

Cited in: *Fredricksen v. Fullmer*, 74 Idaho 164, 258 P.2d 1155 (1953).

RESEARCH REFERENCES

Am. Jur. — 1 Am. Jur. 2d, Acknowledgments, § 12.

55-704. By whom taken — Outside United States. — The proof or acknowledgment of an instrument may be made without the United States, before either:

1. A minister, commissioner or charge d'affaires of the United States, resident and accredited in the country where the proof or acknowledgment is made; or,
2. A consul or vice consul of the United States resident in the country where the proof or acknowledgment is made; or,

3. A judge of a court of record of the country where the proof or acknowledgment is made; or,
4. Commissioners appointed for such purposes by the governor of the state pursuant to statute; or,
5. A notary public.

History.

1863, p. 528, § 4; R.S., § 2953; reen. R.C. & C.L., § 3126; C.S., § 5390; I.C.A., § 54-704.

RESEARCH REFERENCES

Am. Jur. — 1 Am. Jur. 2d, Acknowledgments, § 12.

55-705. By whom taken — Members of the armed forces. — Any officer of any component of any branch of the armed forces of the United States as may be designated to take a deposition, shall have the general powers of a notary public in the administration of oaths, the execution and acknowledgment of legal instruments, the attestation of documents and all other forms of notarial acts to be executed by persons in any of the armed forces of the United States or subject to military or naval law and/or their wives and/or dependents.

Such an acknowledgment or oath, whether heretofore or hereafter so taken within or without the state of Idaho or the United States and whether with or without seal or stamp, shall have the same force and effect as an acknowledgment or oath before a notary public duly commissioned by and residing in the state of Idaho. Recital in the certificate of such officer that he holds the office stated in the certificate and that the affiant is a member of the armed forces or subject to military or naval law, or wife or dependent of such member, shall be prima facie evidence of such facts.

History.

§ 1, p. 164; am. 1959, ch. 190, § 1, p. 420; am. I.C.A., § 54-704A, as added by 1943, ch. 80, 1967, ch. 13, § 1, p. 21.

STATUTORY NOTES**Effective Dates.**

Section 2 of S.L. 1943, ch. 80 declared an emergency. Approved February 22, 1943.

55-706. Acknowledgment before deputies. — When any of the officers mentioned in the four (4) preceding sections are authorized by law to appoint a deputy, the acknowledgment or proof may be taken by such deputy, in the name of his principal.

History.

R.S., § 2954; reen. R.C. & C.L., § 3127; C.S., § 5391; I.C.A., § 54-705.

STATUTORY NOTES

Compiler's Notes.

The phrase "four preceding sections" refers

to §§ 55-701 to 55-704. Section 55-705 was an addition made by a later law.

RESEARCH REFERENCES

Am. Jur. — 1 Am. Jur. 2d, Acknowledgments, §§ 13, 14.

C.J.S. — 1A C.J.S., Acknowledgments, § 30.

55-707. Requisites of acknowledgment. — The acknowledgment of an instrument must not be taken, unless the officer taking it knows, or has satisfactory evidence from a credible source, that the person making such acknowledgment is the individual who is described in, and who executed, the instrument; or, if executed by a corporation, that the person making such acknowledgment is the president or vice president or secretary or assistant secretary of such corporation; or other person who executed on its behalf; or if executed in the name of the state of Idaho or that of any county, political subdivision, municipal or quasi-municipal or public corporation, that the person making such acknowledgment is one (1) of its officers executing the same; or if executed in a partnership name, that the person making the acknowledgment is the partner or one (1) of the partners subscribing the partnership name to such instrument; or, if executed by a limited liability company, that the person making such acknowledgment is a manager or member of such limited liability company or other person who executed on its behalf.

History.

1863, p. 528, § 6; R.S., § 2955; reen. R.C. & C.L., § 3128; C.S., § 5392; am. 1923, ch. 144, § 1, p. 209; am. 1929, ch. 183, § 1, p. 94;

I.C.A., § 54-706; am. 1937, ch. 176, § 1, p. 291; am. 1982, ch. 225, § 1, p. 600; am. 1999, ch. 213, § 1, p. 568.

JUDICIAL DECISIONS

ANALYSIS

Duty of officer.

Identification of person acknowledging instrument.

Not part of execution.

Personal appearance required.

Question for court.

Substantial compliance.

Duty of Officer.

Officer taking acknowledgment is not required to see person sign the instrument nor to witness the instrument, but is required to ascertain whether or not the party acknowledges the instrument as his or her obligation or contract, and as having been executed by him or her. *First Nat'l Bank v. Glenn*, 10 Idaho 224, 77 P. 623 (1904).

Identification of Person Acknowledging Instrument.

When an officer taking an acknowledgment does not himself know that the person, who

appears before him, is actually the same person whose name is subscribed to the instrument, such officer is authorized, by statute, to accept either the oath or affirmation of a credible witness. *Little v. Bergdahl Oil Co.*, 60 Idaho 662, 95 P.2d 833 (1939).

In taking acknowledgments, a notary properly discharges his duty only when the persons acknowledging execution personally appear and the notary has satisfactory evidence, based either on his personal knowledge or on the oath or affirmation of a credible witness, that the acknowledgers are who they say they are and did what they say they did. *Farm*

Bureau Fin. Co. v. Carney, 100 Idaho 745, 605 P.2d 509 (1980).

Not Part of Execution.

An acknowledgment does not form a part of the execution of an instrument. *Little v. Bergdahl Oil Co.*, 60 Idaho 662, 95 P.2d 833 (1939).

Personal Appearance Required.

Person acknowledging execution of instrument must be personally present before officer, and acknowledgment over telephone is insufficient. *Myers v. Eby*, 33 Idaho 266, 193 P. 77 (1920).

Where neither husband nor wife, who had executed a purported oil and gas lease, contemplating the leasing of community property for a term of years, personally appeared before a notary public, the notary could not take their acknowledgment of the lease by accepting or acting upon an affidavit of a third party, stating that the third party personally knew the husband and wife, and was present and saw them execute the lease. *Little v. Bergdahl Oil Co.*, 60 Idaho 662, 95 P.2d 833 (1939).

An officer authorized to take acknowledgments cannot, in the absence of identical person, who signed the instrument, accept the affidavit of a witness to the signature, and, upon such affidavit alone, take the acknowledgment. *Little v. Bergdahl Oil Co.*, 60 Idaho 662, 95 P.2d 833 (1939).

Question for Court.

Where defendants in quiet title suit attached a copy of a purported oil and gas lease, executed by plaintiffs, covering land in question, to their answer and annexed the affidavit of a third party respecting execution and acknowledgment of lease, plaintiffs' general demurrer to the answer admitted facts shown by the affidavit and submitted to trial court the question as to whether there was a valid acknowledgment of purported lease. *Little v. Bergdahl Oil Co.*, 60 Idaho 662, 95 P.2d 833 (1939).

Substantial Compliance.

A substantial compliance with the statutory form of acknowledgment will suffice, and technicalities will be disregarded. *Pacific Coast Joint Stock Land Bank v. Security Prods. Co.*, 56 Idaho 436, 55 P.2d 716 (1936).

Where an acknowledgment of a mortgage before a Utah notary public was made on a printed form prepared for use in Idaho, from which the word "Idaho" was stricken out and the word "Utah" substituted in two places, a clerical error in failing to strike the word "Idaho" from the recitation that the notary was such in and for the state of "Idaho" does not vitiate the certificate of acknowledgment. *Pacific Coast Joint Stock Land Bank v. Security Prods. Co.*, 56 Idaho 436, 55 P.2d 716 (1936).

Acknowledgment of a mortgagor that he signed and sealed the mortgage as his free and voluntary act and deed for the uses and purposes therein mentioned is a sufficient compliance with the statutory requirement of acknowledgment of the execution of a mortgage. *Pacific Coast Joint Stock Land Bank v. Security Prods. Co.*, 56 Idaho 436, 55 P.2d 716 (1936).

A certificate of acknowledgment complete and regular on its face raises a presumption in favor of the truth of every fact recited therein, which the uncorroborated testimony of the party acknowledging the instrument is insufficient to overcome, and the additional affidavit of the notary that he could not recall any of the circumstances surrounding the execution and acknowledgment of an instrument, although it had sometimes been his practice to take an acknowledgment in the absence of the signing party, was insufficient to impeach the validity of the acknowledgment. *Credit Bureau v. Sleight*, 92 Idaho 210, 440 P.2d 143 (1968).

Strict compliance with the statutory form set forth in § 55-710 is not required; substantial compliance with the statutory requirements is sufficient. Thus, where the certificate did not contain the words "known or identified to me (or proved to me on the oath of ____), to be the person whose name is subscribed to the within instrument," but where the record disclosed that the notary did in fact know that the persons who executed the certificate of acknowledgment were the same persons who executed the written instrument, the acknowledgment substantially complied with the provisions of this section and §§ 55-709 and 55-710. *Benjamin Franklin Sav. & Loan Ass'n v. New Concept Realty & Dev., Inc.*, 107 Idaho 711, 692 P.2d 355 (1984).

RESEARCH REFERENCES

Am. Jur. — 1 Am. Jur. 2d, Acknowledgments, § 26 et seq.

C.J.S. — 1A C.J.S., Acknowledgments, § 42 et seq.

A.L.R. — Admissibility, in action against

notary public, of evidence as to usual business practice of notary public of identifying person seeking certificate of acknowledgment. 59 A.L.R.3d 1327.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

.....
Notary Public for
Residing at
My commission expires

History.
I.C., § 55-707A, as added by 1999, ch. 213,
§ 2, p. 568.

STATUTORY NOTES

Compiler's Notes.
The words enclosed in parentheses so ap-
peared in the law as enacted.

55-708. Acknowledgment by married woman. — The acknowl-
edgment of a married woman to any instrument in writing shall be taken and
certified to in the same manner and form as that of a single person, and
must be substantially in the form prescribed by section 55-710[, Idaho
Code].

History.
1907, p. 5, § 1; reen. R.C. & C.L., § 3129;
C.S., § 5393; I.C.A., § 54-707.

STATUTORY NOTES

Compiler's Notes. section was added by the compiler to conform
The bracketed insertion at the end of the to the statutory citation style.

JUDICIAL DECISIONS

Effect of Improper Acknowledgment.
A contract to convey community property,
unless the wife joins with the husband in
executing and acknowledging the same, is
absolutely void. Wits-Keets-Poo v. Rowton, 28
Idaho 193, 152 P. 1064 (1915); Myers v. Eby,
33 Idaho 266, 193 P. 77 (1920); Childs v. Reed,
34 Idaho 450, 202 P. 685 (1921); Fargo v.
Bennett, 35 Idaho 359, 206 P. 692 (1922);
McKinney v. Merritt, 35 Idaho 600, 208 P. 244
(1922); Hart v. Turner, 39 Idaho 50, 226 P. 282
(1924); Elliott v. Craig, 45 Idaho 15, 260 P. 433
(1927).
Where a purported oil and gas lease, con-

templating the leasing of community property
for a term of years, was not properly acknowl-
edged by a married woman, there was no
“estoppel” against her to deny validity of lease
as against lessee when it was not charged
that she had falsely represented or concealed
material facts, or that money expended in
exploring lands had been expended in reli-
ance upon her false representations or con-
cealment of material facts. Little v. Bergdahl
Oil Co., 60 Idaho 662, 95 P.2d 833 (1939).
Cited in: Abbl v. Morrison, 64 Idaho 489,
134 P.2d 94 (1943).

DECISIONS UNDER PRIOR LAW
ANALYSIS

Contents of certificate.
Form of certificate.

Notarization.

Contents of Certificate.

Certificate of acknowledgment which shows that acknowledgment of husband was taken separate and apart from wife, and that wife's acknowledgment was not taken separate and apart from husband, is void. *Cooperative Sav. & Loan Ass'n v. Green*, 5 Idaho 660, 51 P. 770 (1897).

If certificate fails to show examination and acknowledgment as required by law, it will be presumed that such necessary acts were not done, at least until the certificate is corrected. *Cooperative Sav. & Loan Ass'n v. Green*, 5 Idaho 660, 51 P. 770 (1897).

Certificate stating that notary apprised wife of the contents of the instrument, of her rights, and of the effect of signing the same, and that she did then freely and voluntarily, separate and apart from her husband, sign and acknowledge said instrument, is sufficient. *Berry v. Northwestern & P. Hypotheek Bank*, 93 F. 44 (9th Cir. 1898); *Northwestern & P. Hypotheek Bank v. Rauch*, 5 Idaho 752, 51 P. 764 (1898).

Form of Certificate.

Certificate of acknowledgment need not follow the exact words of the statute, but it is sufficient if it substantially complies therewith. *Christensen v. Hollingsworth*, 6 Idaho 87, 53 P. 211 (1898); *Curtis v. Bunnell & Eno Inv. Co.*, 6 Idaho 298, 55 P. 659 (1898).

Where certificate of acknowledgment of a married woman is valid on its face, and is attacked on the ground that it is false, validity of certificate will be sustained, unless proof of the falsity is clear and convincing,

and establishes the fact beyond a reasonable doubt. *Gray v. Law*, 6 Idaho 559, 57 P. 435 (1899).

Where certificate of acknowledgment is regular in form, its validity will be sustained in the absence of clear and convincing proof that the law was not complied with. *Gray v. Law*, 6 Idaho 559, 57 P. 435 (1899).

Conveyance of common property occupied by husband and wife is invalid where none of the requirements of the law were complied with by the officer taking the acknowledgment. *Wilson v. Wilson*, 6 Idaho 597, 57 P. 708 (1899).

Notarization.

Acknowledgment to the execution of an instrument carries with it an adoption of the signature thereto, and recognition of the same as the name and signature of the person making such acknowledgment. *First Nat'l Bank v. Glenn*, 10 Idaho 224, 77 P. 623 (1904).

Where the contents of an instrument were explained to a married woman and she stated that it was all right with her if it was with her husband, and that whatever he did or said was all right, the notary was justified in attaching his certificate of acknowledgment thereto. *First Nat'l Bank v. Glenn*, 10 Idaho 224, 77 P. 623 (1904).

Court should decree correction of certificate where acknowledgment was in fact taken in conformity with substantial requirements of statute, and facts actually existed which would have enabled notary to attach proper certificate of acknowledgment. *Booth Mercantile Co. v. Murphy*, 14 Idaho 212, 93 P. 777 (1908).

RESEARCH REFERENCES

Am. Jur. — 1 *Am. Jur.* 2d, Acknowledgments, § 1 et seq.

55-709. Certificate of acknowledgment. — An officer taking the acknowledgment of an instrument must endorse thereon a certificate substantially in the forms hereinafter prescribed.

History.

1863, p. 528, § 5; R.S., § 2957; reen. R.C. & C.L., § 3130; C.S., § 5394; I.C.A., § 54-708.

JUDICIAL DECISIONS

ANALYSIS

Construction of certificate.
Cure of deficiencies.
Impeachment of certificate.
Married women.
Personal appearance.

Question for court.

Substantial compliance.

Construction of Certificate.

In aid of a certificate of acknowledgment, reference may be had to the whole instrument or to any part thereof, and certificates of acknowledgment will be upheld when the substance is found, and conveyances of proof of them will not be defeated by technical or unsubstantial objections. *Pacific Coast Joint Stock Land Bank v. Security Prods. Co.*, 56 Idaho 436, 55 P.2d 716 (1936).

The omission of the acknowledger's name in the blank in the certificate will not render the certificate ineffective if his name can be ascertained from other sources, as from the face of the instrument itself or from other parts of the certificate. *Farm Bureau Fin. Co. v. Carney*, 100 Idaho 745, 605 P.2d 509 (1980).

Technical deficiencies in the certificate of acknowledgment will not render the certificate defective if the alleged deficiency can be cured by reference to the instrument itself. *Farm Bureau Fin. Co. v. Carney*, 100 Idaho 745, 605 P.2d 509 (1980).

Cure of Deficiencies.

Technical deficiencies in the certificate of acknowledgment may be cured by reference to the instrument itself. *Anderson Land Co. v. Small Bus. Admin.*, 718 F.2d 968 (9th Cir. 1983).

Impeachment of Certificate.

Notary may not testify to any fact tending to impeach a certificate of acknowledgment made by him. *First Nat'l Bank v. Glenn*, 10 Idaho 224, 77 P. 623 (1904).

Married Women.

Acknowledgment of married woman correctly made, but defectively certified, may be reformed by decree of district court. *Bunnell & Eno Inv. Co. v. Curtis*, 5 Idaho 652, 51 P. 767 (1897).

Personal Appearance.

A notary betrays the public trust when he signs a certificate of acknowledgment with knowledge that the blanks will be filled in later or when he signs a completed certificate of acknowledgment but without requiring the personal appearance of the acknowledgers; however, whether the certificate blanks are

empty or full is not the significant fact, since the key to the statutory safeguard is the integrity of the notary in the proper discharge of notarial duties by requiring the signatories to personally appear before him and acknowledge that they did in fact execute the document. *Farm Bureau Fin. Co. v. Carney*, 100 Idaho 745, 605 P.2d 509 (1980).

Question for Court.

Where defendants in quiet title suit attached a copy of a purported oil and gas lease, executed by plaintiffs, covering land in question, to their answer and annexed the affidavit of a third party respecting execution and acknowledgment of lease, plaintiffs' general demurrer to the answer admitted facts shown by the affidavit and submitted to trial court the question as to whether there was a valid acknowledgment of purported lease. *Little v. Bergdahl Oil Co.*, 60 Idaho 662, 95 P.2d 833 (1939).

Substantial Compliance.

Idaho has generally adhered to the view that substantial compliance with the statutory requirements regarding acknowledgments will suffice. *Farm Bureau Fin. Co. v. Carney*, 100 Idaho 745, 605 P.2d 509 (1980).

Strict compliance with the statutory form set forth in § 55-710 is not required; substantial compliance with the statutory requirements is sufficient. Thus, where the certificate did not contain the words "known or identified to me (or proved to me on the oath of _____), to be the person whose name is subscribed to the within instrument," but the record disclosed that the notary did in fact know that the persons who executed the certificate of acknowledgment were the same persons who executed the written instrument, the acknowledgment substantially complied with the provisions of this section and §§ 55-707 and 55-710. *Benjamin Franklin Sav. & Loan Ass'n v. New Concept Realty & Dev., Inc.*, 107 Idaho 711, 692 P.2d 355 (1984).

Cited in: *Little v. Bergdahl Oil Co.*, 60 Idaho 662, 95 P.2d 833 (1939); *Abbl v. Morrison*, 64 Idaho 489, 134 P.2d 94 (1943); *Kloos v. Jacobson*, 30 Bankr. 965 (Bankr. D. Idaho 1983).

RESEARCH REFERENCES

Am. Jur. — 1 Am. Jur. 2d, Acknowledgments, § 26 et seq.

C.J.S. — 1A C.J.S., Acknowledgments, § 50 et seq.

55-710. Form of certificate. — The certificate of acknowledgment,

unless it is otherwise in this chapter provided, must be substantially in the following form:

State of Idaho, county of, ss.

On thisday of, in the year of, before me (here insert the name and quality of the officer), personally appeared, known or identified to me (or proved to me on the oath of), to be the person whose name is subscribed to the within instrument, and acknowledged to me that he (or they) executed the same.

History.

1863, p. 528, § 8; R.S., § 2958; reen. R.C. &

C.L., § 3131; C.S., § 5395; I.C.A., § 54-709; am. 1982, ch. 225, § 2, p. 600.

STATUTORY NOTES

Cross References.

Acknowledgment by married woman, § 55-708.

Compiler's Notes.

The words enclosed in parentheses so appeared in the law as enacted.

JUDICIAL DECISIONS

ANALYSIS

Acknowledgment regular on its face.

Cure of deficiencies.

Distinguished from forms for notarial acts.

Personal appearance.

Substantial compliance.

Acknowledgment Regular on Its Face.

A certificate of acknowledgment complete and regular on its face raises a presumption in favor of the truth of every fact recited therein, which the uncorroborated testimony of the party acknowledging the instrument is insufficient to overcome, and the additional affidavit of the notary that he could not recall any of the circumstances surrounding the execution and acknowledgment of an instrument, although it had sometimes been his practice to take an acknowledgment in the absence of the signing party, was insufficient to impeach the validity of the acknowledgment. *Credit Bureau v. Sleight*, 92 Idaho 210, 440 P.2d 143 (1968).

Cure of Deficiencies.

Technical deficiencies in the certificate of acknowledgment may be cured by reference to the instrument itself. *Anderson Land Co. v. Small Bus. Admin.*, 718 F.2d 968 (9th Cir. 1983).

Distinguished from Forms for Notarial Acts.

Where plaintiff filed an "affidavit" in opposition to a motion for summary judgment, this document was only in partial affidavit form since it was not subscribed and sworn to as an oath or affirmation, as required of an affidavit

pursuant to § 51-109, but rather, the signature of plaintiff was merely acknowledged by a notary public in the manner required for the acknowledgment of signatures on deeds for recording under this section; accordingly, the facts stated in the "affidavit" were not under oath as required by Idaho R. Civ. P. 56(e). *Evans v. Twin Falls County*, 118 Idaho 210, 796 P.2d 87 (1990), cert. denied, 498 U.S. 1086, 111 S. Ct. 960, 112 L. Ed. 2d 1048 (1991).

Personal Appearance.

A notary betrays the public trust when he signs a certificate of acknowledgment with knowledge that the blanks will be filled in later or when he signs a completed certificate of acknowledgment but without requiring the personal appearance of the acknowledgers; however, whether the certificate blanks are empty or full is not the significant fact, since the key to the statutory safeguard is the integrity of the notary in the proper discharge of notarial duties by requiring the signatories to personally appear before him and acknowledge that they did in fact execute the document. *Farm Bureau Fin. Co. v. Carney*, 100 Idaho 745, 605 P.2d 509 (1980).

Substantial Compliance.

Since this section requires substantial compliance, but not strict compliance with the

prescribed form, a certificate that stated that the grantors personally appeared before the notary and the notary's affidavit established that he knew the signers to be the persons who executed the deed, the acknowledgment was valid and was sufficient to impart constructive notice to the trustee. *Benjamin Franklin Sav. & Loan Ass'n v. New Concept Realty & Dev., Inc.*, 753 F.2d 804 (9th Cir. 1985).

Strict compliance with the statutory form set forth in this section is not required; substantial compliance with the statutory requirements is sufficient. Thus, where the cer-

tificate did not contain the words "known or identified to me (or proved to me on the oath of _____), to be the person whose name is subscribed to the within instrument," but where the record disclosed that the notary did in fact know that the persons who executed the certificate of acknowledgment were the same persons who executed the written instrument, the acknowledgment substantially complied with the provisions of §§ 55-707 and 55-709 and this section. *Benjamin Franklin Sav. & Loan Ass'n v. New Concept Realty & Dev., Inc.*, 107 Idaho 711, 692 P.2d 355 (1984).

RESEARCH REFERENCES

Am. Jur. — 1 Am. Jur. 2d, Acknowledgments, § 26 et seq.

55-711. Form of certificate — Acknowledgment by corporation. — The certificate of acknowledgment of an instrument executed by a corporation must be substantially in the following form:

State of Idaho, county of _____, ss.

On this _____ day of _____, in the year _____, before me (here insert the name and quality of the officer), personally appeared _____ known or identified to me (or proved to me on the oath of _____) to be the president, or vice-president, or secretary or assistant secretary, of the corporation that executed the instrument or the person who executed the instrument on behalf of said corporation, and acknowledged to me that such corporation executed the same.

History.

R.S., § 2959; reen. R.C. & C.L., § 3132; C.S., § 5396; am. 1923, ch. 144, § 2, p. 209;

I.C.A., § 54-710; am. 1937, ch. 176, § 2, p. 292; am. 1982, ch. 225, § 3, p. 600.

STATUTORY NOTES

Compiler's Notes.

The words enclosed in parentheses so appeared in the law as enacted.

JUDICIAL DECISIONS

ANALYSIS

Chattel mortgages.

Cure of deficiencies.

Party making not designated as officer.

Statement of authority.

Substantial compliance.

Chattel Mortgages.

The conclusion reached by the trial court that securities credit corporation was a general creditor was correct, acknowledgments to the chattel mortgages being void and the

instruments not meeting the requirements by being properly acknowledged and lawfully filed under the chattel mortgage section. A judgment having been entered for the disposition of the property prevents the defendant

from now availing himself of the statute by correcting the errors in mortgages. *Jordan v. Securities Credit Corp.*, 79 Idaho 284, 314 P.2d 967 (1957).

As between the parties, the chattel mortgages are enforceable and will be given full weight even though ineffective as to third persons because of lack of notice. *Jordan v. Securities Credit Corp.*, 79 Idaho 284, 314 P.2d 967 (1957).

Cure of Deficiencies.

Technical deficiencies in the certificate of acknowledgment may be cured by reference to the instrument itself. *Anderson Land Co. v. Small Bus. Admin.*, 718 F.2d 968 (9th Cir. 1983).

Party Making Not Designated as Officer.

The acknowledgment on chattel mortgages does not even pretend to comply with the corporate acknowledgment of this section and is, therefore, void because it fails to disclose that party making it was a corporate officer of corporation and with the authority to execute

it; this being a void acknowledgment. The instrument could not be filed for record under the mandatory provision of § 55-805. Under circumstances mortgages had no preference and the mortgagee was the same as the general creditors. *Jordan v. Securities Credit Corp.*, 79 Idaho 284, 314 P.2d 967 (1957).

Statement of Authority.

Nothing in the statutes requires the acknowledgment to include a specific statement of corporate authority. *Anderson Land Co. v. Small Bus. Admin.*, 718 F.2d 968 (9th Cir. 1983).

Substantial Compliance.

Where corporate form acknowledgment established notary's personal knowledge of signer's corporate office and, when read together with quitclaim deed, made it apparent that corporation executed the deed, such acknowledgment substantially complied with statutory requirements. *Anderson Land Co. v. Small Bus. Admin.*, 718 F.2d 968 (9th Cir. 1983).

RESEARCH REFERENCES

Am. Jur. — 1 Am. Jur. 2d, Acknowledgments, §§ 7, 53.

C.J.S. — 1A C.J.S., Acknowledgments, § 59 et seq.

55-711A. Form of certificate — Acknowledgment by limited liability company. — The certificate of acknowledgment of an instrument executed by a limited liability company must be substantially in the following form:

State of Idaho, county of, ss.

On this day of, in the year, before me (here insert the name and quality of the officer), personally appeared, known or identified to me (or proved to me on the oath of), to be the manager or a member of the limited liability company that executed the instrument or the person who executed the instrument on behalf of said limited liability company and acknowledged to me that such limited liability company executed the same.

History.

I.C., § 55-711A, as added by 1999, ch. 213, § 3, p. 568.

STATUTORY NOTES

Compiler's Notes.

The words enclosed in parentheses so appeared in the law as enacted.

55-712. Form of certificate — Acknowledgment by attorney. — The certificate of acknowledgment by an attorney in fact must be substantially in the following form:

State of Idaho, county of, ss.

On this day of, in the year, before me (here insert the name and quality of the officer), personally appeared, known or identified to me (or proved to me on the oath of) to be the person whose name is subscribed to the within instrument as the attorney in fact of, and acknowledged to me that he subscribed the name of thereto as principal, and his own name as attorney in fact.

History.

R.S., § 2961; reen. R.C. & C.L., § 3133; C.S., § 5397; I.C.A., § 54-711; am. 1982, ch. 225, § 4, p. 600.

STATUTORY NOTES

Cross References.

Power must be recorded before conveyance by attorney, § 55-806.

Compiler's Notes.

The words enclosed in parentheses so appeared in the law as enacted.

RESEARCH REFERENCES

Am. Jur. — 1 Am. Jur. 2d, Acknowledgments, §§ 6, 51.

C.J.S. — 1A C.J.S., Acknowledgments, § 19.

55-712A. Form of certificate — Acknowledgment by person signing by mark. — The certificate of acknowledgment by a person signing by mark shall be substantially in the following form:

“Mark:

Mark affixed by (printed or typewritten name of person signing by mark) in the presence of undersigned notary.

State of Idaho)
) ss.
County of)

On this day of, in the year, before me (here insert the name and quality of the officer), personally appeared, known or identified to me (or proved to me on the oath of) to be the person whose name is subscribed to the within instrument, and acknowledged to me that he executed the same by affixing his mark thereto.

..... (official signature and seal)”

History.

I.C., § 55-712A, as added by 2007, ch. 312, § 3, p. 880.

STATUTORY NOTES

Compiler's Notes.

The words enclosed in parentheses so appeared in the law as enacted.

55-712B. Form of certificate — Acknowledgment by person physically unable to sign or sign by mark. — The certificate of acknowledgment by a person physically unable to sign or sign by mark must be substantially in the following form:

“Signature of person by notary:

Witness Signature:

Signature affixed by notary in the presence of (names of person and witness).

State of Idaho)
) ss.
County of)

On this day of, in the year, before me (here insert the name and quality of the officer), personally appeared, known or identified to me (or proved to me on the oath of) to be the person whose name is subscribed to the within instrument, and acknowledged to me that he executed the same by directing the undersigned notary to affix his signature thereto.

..... (official signature and seal)”

History.

I.C., § 55-712B, as added by 2007, ch. 312,
§ 4, p. 880.

STATUTORY NOTES

Compiler's Notes.

The words enclosed in parentheses so appeared in the law as enacted.

55-713. Form of certificate — Acknowledgment by official or fiduciary. — The certificate of acknowledgment of an instrument which is executed by a person in his own name as trustee or as executor, administrator, guardian, sheriff, receiver or other official or representative capacity, shall be substantially in the following form:

State of Idaho, county of, ss.

On this day of, in the year, before me (here insert the name and quality of the officer) personally appeared, known or identified to me (or proved to me on the oath of), to be the person whose name is subscribed to the within instrument as (here insert the official or representative capacity in which the instrument is executed) and acknowledged to me that he (or they) executed the same as such (here insert again the official or representative capacity in which the instrument is executed).

History. § 2, p. 324; I.C.A., § 54-712; am. 1982, ch. C.S., § 5397(A), as added by 1929, ch. 183, 225, § 5, p. 600.

STATUTORY NOTES

Compiler's Notes.

The words enclosed in parentheses so appeared in the law as enacted.

55-714. Form of certificate — Acknowledgment by partnership.

— The certificate of acknowledgment of an instrument executed in a partnership name must be substantially in the following form:

State of Idaho, county of, ss.

On thisday of, in the year, before me (here insert the name and quality of the officer), personally appeared, known or identified to me (or proved to me on the oath of), to be one of the partners in the partnership of (here insert partnership name signed to instrument), and the partner or one of the partners who subscribed said partnership name to the foregoing instrument, and acknowledged to me that he executed the same in said partnership name.

History. § 3, p. 94; I.C.A., § 54-713; am. 1982, ch. 225, C.S., § 5397(B), as added by 1929, ch. 183, § 6, p. 600.

STATUTORY NOTES

Compiler's Notes.

The words enclosed in parentheses so appeared in the law as enacted.

RESEARCH REFERENCES

Am. Jur. — 1 Am. Jur. 2d, Acknowledgments, §§ 8, 52. **C.J.S.** — 1A C.J.S., Acknowledgments, §§ 22, 600.

55-715. Form of certificate — Acknowledgment by state or political subdivision. — The certificate of acknowledgment of an instrument executed in the name of the state of Idaho or any county, political subdivision, municipal, quasi-municipal or public corporation, must be substantially in the following form:

State of Idaho, county of, ss.

On thisday of, in the year, before me (here insert the name and quality of the officer), personally appeared, known or identified to me (or proved to me on the oath of), to be the (here insert the official capacity of the officer making the acknowledgment) of the (here insert the name of state, county, subdivision or corporation executing the instrument) that executed the said instrument, and acknowledged to me that such (here insert name of state, county, political subdivision, municipal or public corporation executing the instrument) executed the same.

History.

C.S., § 5397(C), as added by 1929, ch. 183, § 4, p. 324; I.C.A., § 54-714; am. 1982, ch. 225, § 7, p. 600.

STATUTORY NOTES**Compiler's Notes.**

The words enclosed in parentheses so appeared in the law as enacted.

Section 5 of S.L. 1929, ch. 183 provided: "Sections 2, 3 and 4 of this act shall be known and designated as sections 5397(A) [§ 55-713], 5397(B) [§ 55-714] and 5397(C) [§ 55-715] respectively of the Compiled Statutes of the state of Idaho, and shall be added to and

inserted in said Compiled Statutes in the order designated following section 5397 [§ 55-712] thereof, and construed as a part of article 3 of chapter 208 of the Compiled Statutes of Idaho."

Effective Dates.

Section 8 of S.L. 1982, ch. 225 declared an emergency. Approved March 29, 1982.

55-716. Authentication of certificate. — Officers taking and certifying acknowledgments or proof of instruments for record must authenticate their certificates by affixing thereto their signatures, followed by the names of their offices; also their seals of office, if by the laws of the territory, state or country where the acknowledgment or proof is taken, or by authority of which they are acting, they are required to have official seals.

History.

1863, p. 528, § 5; R.S., § 2962; reen. R.C. & C.L., § 3134; C.S., § 5398; I.C.A., § 54-715.

JUDICIAL DECISIONS**Clerical Errors.**

Where a notary public of the state of Utah took an acknowledgment for a mortgage on land in Idaho and used a printed form for such acknowledgment, the fact that the printed word "Idaho" was crossed out in two

places but was not crossed out in the third place did not render the certificate invalid, because such an omission was merely a clerical error. *Pacific Coast Joint Stock Land Bank v. Security Prods. Co.*, 56 Idaho 436, 55 P.2d 716 (1936).

RESEARCH REFERENCES

Am. Jur. — 1 Am. Jur. 2d, Acknowledgments, § 63 et seq.

C.J.S. — 1A C.J.S., Acknowledgments, §§ 54 to 57.

55-717. Certificate of justice — Authentication. [Repealed.]

Repealed by S.L. 2012, ch. 20, § 24, effective July 1, 2012.

History.

R.S., § 2963; reen. R.C. & C.L., § 3135; C.S., § 5399; I.C.A., § 54-716.

55-718. Proof of execution. — Proof of the execution of an instrument, when not acknowledged, may be made either:

1. By the parties executing it, or either of them; or,
2. By subscribing witness; or,
3. By other witnesses in the cases hereinafter mentioned.

History.

1863, p. 528, § 10; R.S., § 2964; reen. R.C. & C.L., § 3136; C.S., § 5400; I.C.A., § 54-717.

JUDICIAL DECISIONS

Cited in: Adams v. Anderson, 142 Idaho 208, 127 P.3d 111 (2005).

RESEARCH REFERENCES

C.J.S. — 1A C.J.S., Acknowledgments, §§ 52, 64.

55-719. Identity of witness must be known or proved. — If by a subscribing witness such witness must be personally known to the officer taking the proof, to be the person whose name is subscribed to the instrument, as a witness, or must be proved to be such by the oath of a credible witness.

History. 1863, p. 528, § 11; R.S., § 2965; reen. R.C. & C.L., § 3137; C.S., § 5401; I.C.A., § 54-718.

JUDICIAL DECISIONS

ANALYSIS

Identification by witness.
Personal appearance required.

Identification by Witness.

When an officer taking an acknowledgment does not himself know that the person who appears before him is actually the same person whose name is subscribed to the instrument, such officer is authorized, by statute, to accept either the oath or affirmation of a credible witness. *Little v. Bergdahl Oil Co.*, 60 Idaho 662, 95 P.2d 833 (1939).

Personal Appearance Required.

Where neither husband nor wife, who had executed a purported oil and gas lease, contemplating the leasing of community property for a term of years, personally appeared before a notary public, the notary could not take

their acknowledgment of the lease by accepting or acting upon an affidavit of a third party, stating that the third party personally knew the husband and wife, and was present and saw them execute the lease. *Little v. Bergdahl Oil Co.*, 60 Idaho 662, 95 P.2d 833 (1939).

An officer authorized to take acknowledgments cannot, in the absence of identical person who signed the instrument, accept the affidavit of a witness to the signature, and, upon such affidavit alone, take the acknowledgment. *Little v. Bergdahl Oil Co.*, 60 Idaho 662, 95 P.2d 833 (1939).

Cited in: *Fredricksen v. Fullmer*, 74 Idaho 164, 258 P.2d 1155 (1953).

RESEARCH REFERENCES

Am. Jur. — 1 Am. Jur. 2d, Acknowledgments, § 47 et seq.

C.J.S. — 1A C.J.S., Acknowledgments, §§ 43, 61.

55-720. Proof of identity of grantor. — The subscribing witness must prove that the person whose name is subscribed to the instrument as a party is the person described in it, and that such person executed it, and that the witness subscribed his name thereto as a witness.

History. 1863, p. 528, § 12; R.S., § 2966; reen. R.C.

& C.L., § 3138; C.S., § 5402; I.C.A., § 54-719.

JUDICIAL DECISIONS

Cited in: Fredricksen v. Fullmer, 74 Idaho 164, 258 P.2d 1155 (1953).

RESEARCH REFERENCES

Am. Jur. — 1 Am. Jur. 2d, Acknowledgments, § 105.

55-721. Proof of instrument by handwriting. — The execution of an instrument may be established by proof of the handwriting of the party and of a subscribing witness, if there is one, in the following cases:

1. When the parties and all the subscribing witnesses are dead; or,
2. When the parties and all the subscribing witnesses are nonresidents of the state; or,
3. When the place of their residence is unknown to the party desiring the proof, and cannot be ascertained by the exercise of due diligence; or,
4. When the subscribing witness conceals himself or cannot be found by the officer, by the exercise of due diligence, in attempting to serve the subpoena or attachment; or,
5. In case of the continued failure or refusal of the witness to testify for the space of one (1) hour, after his appearance.

History.

1863, p. 528, § 14; R.S., § 2967; reen. R.C. & C.L., § 3139; C.S., § 5403; I.C.A., § 54-720.

JUDICIAL DECISIONS

Handwriting.

Relief warrant issued to deceased which was endorsed and cashed could not be used as an example to prove handwriting on written instrument not witnessed or acknowledged as that of deceased, where auditor testified that he could not say positively that handwriting

on warrant was handwriting of deceased. Fredricksen v. Fullmer, 74 Idaho 164, 258 P.2d 1155 (1953).

Cited in: Bell v. Shields, 18 Idaho 649, 111 P. 1076 (1910).

RESEARCH REFERENCES

C.J.S. — 1A C.J.S., Acknowledgments, §§ 19, 23.

55-722. Proof of instrument by handwriting — What evidence must prove. — The evidence taken under the preceding section must satisfactorily prove to the officer the following facts:

1. The existence of one or more of the conditions mentioned therein; and,
2. That the witness testifying knew the person whose name purports to be subscribed to the instrument as a party, and is well acquainted with his signature, and that it is genuine; and,
3. That the witness testifying personally knew the person who subscribed the instrument as a witness; and is well acquainted with his signature, and that it is genuine; and,
4. The place of residence of the witness.

History.

1863, p. 528, § 15; R.S., § 2968; reen. R.C.

& C.L., § 3140; C.S., § 5404; I.C.A., § 54-721.

JUDICIAL DECISIONS**Sufficiency of Proof.**

Relief warrant issued to deceased which was endorsed and cashed could not be used as an example to prove handwriting on written instrument not witnessed or acknowledged as that of deceased, where auditor testified that he could not say positively that handwriting

on warrant was handwriting of deceased. *Fredricksen v. Fullmer*, 74 Idaho 164, 258 P.2d 1155 (1953).

Cited in: *Bell v. Shields*, 18 Idaho 649, 111 P. 1076 (1910).

RESEARCH REFERENCES

Am. Jur. — 1 Am. Jur. 2d, Acknowledgments, §§ 63, 64.

C.J.S. — 1A C.J.S., Acknowledgments, § 74.

55-723. Certificate of proof. — An officer taking proof of the execution of any instrument must, in his certificate indorsed thereon or attached thereto, set forth all the matters required by law to be done or known by him, or proved before him on the proceeding, together with the names of all the witnesses examined before him, their places of residence respectively, and the substance of their testimony.

History.

R.S., § 2969; reen. R.C. & C.L., § 3141; C.S., § 5405; I.C.A., § 54-722.

JUDICIAL DECISIONS

Cited in: *Bell v. Shields*, 18 Idaho 649, 111 P. 1076 (1910).

RESEARCH REFERENCES

Am. Jur. — 1 Am. Jur. 2d, Acknowledgments, §§ 63, 64.

C.J.S. — 1A C.J.S., Acknowledgments, § 74.

55-724. Authority of officers taking proof. — Officers authorized to take proof of instruments are authorized in such proceedings:

1. To administer oaths or affirmations as prescribed in the Code of Civil Procedure.
2. To employ and swear interpreters.
3. To issue subpoenas, as prescribed in the Code of Civil Procedure.
4. To punish for contempt as prescribed in the Code of Civil Procedure.

The civil damages and forfeiture to the party aggrieved are prescribed in the Code of Civil Procedure for a witness disobeying a subpoena.

History.

1863, p. 528, §§ 16, 17; R.S., § 2970; reen.

R.C. & C.L., § 3142; C.S., § 5406; I.C.A., § 54-723.

STATUTORY NOTES

Cross References.

Administration of oaths and affirmations, § 9-1401 et seq.

Civil damages and forfeiture for disobedience of subpoena, § 9-708.

Punishment for contempt, § 7-601 et seq.

Compiler's Notes.

The Code of Civil Procedure, referred to in this section, is a division of Idaho Code, consisting of Titles 1 through 13.

JUDICIAL DECISIONS

Cited in: Bell v. Shields, 18 Idaho 649, 111 P. 1076 (1910).

55-725. Correction of defective certificate. — When the acknowledgment or proof of the execution of an instrument is properly made, but defectively certified, any party interested may have an action in the district court to obtain a judgment correcting the certificate.

History.

R.S., § 2971; reen. R.C. & C.L., § 3143; C.S., § 5407; I.C.A., § 54-724.

JUDICIAL DECISIONS

ANALYSIS

Application.

Time for correction.

Application.

This section refers to all defective certificates of acknowledgment, whether made by a married or single person. Bunnell & Eno Inv. Co. v. Curtis, 5 Idaho 652, 51 P. 767 (1897).

homestead claimant can have the same reformed after a sale of the homestead on execution, so as to preserve homestead for claimant as against execution purchaser. Burbank v. Kirby, 6 Idaho 210, 55 P. 295 (1898).

Time for Correction.

Where a certificate of acknowledgment or a declaration of homestead is fatally defective,

Cited in: Booth Mercantile Co. v. Murphy, 14 Idaho 212, 93 P. 777 (1908).

RESEARCH REFERENCES

Am. Jur. — 1 Am. Jur. 2d, Acknowledgments, § 88 et seq.

C.J.S. — 1A C.J.S., Acknowledgments, § 65 et seq.

55-726. Action to prove instrument. — Any person interested under an instrument entitled to be proved for record may institute an action in the district court against the proper parties to obtain a judgment proving such instrument.

History.

R.S., § 2972; reen. R.C. & C.L., § 3144; C.S., § 5408; I.C.A., § 54-725.

55-727. Judgment entitles instrument to record. — A certified copy of the judgment in a proceeding instituted under either of the two (2) preceding sections, showing the proof of the instrument, and attached

thereto, entitles such instrument to record, with like effect as if acknowledged.

History.

R.S., § 2973; reen. R.C. & C.L., § 3145;
C.S., § 5409; I.C.A., § 54-726.

55-728. Prior instruments not affected. — The legality of the execution, acknowledgment, proof, form or record of any conveyance or other instrument made before this code goes into effect, executed, acknowledged, proved or recorded, is not affected by anything contained in this chapter, but depends for its validity and legality upon the laws in force when the act was performed.

History.

1863, p. 528, § 41; R.S., § 2974; reen. R.C. & C.L., § 3146; C.S., § 5410; I.C.A., § 54-727.

55-729. Record of prior instruments. — All conveyances of real property made before this code goes into effect, and acknowledged or proved, according to the laws in force at the time of such making and acknowledgment or proof, have the same force as evidence, and may be recorded in the same manner and with like effect, as conveyances executed and acknowledged in pursuance of this chapter.

History.

1863, p. 528, § 40; R.S., § 2975; reen. R.C. & C.L., § 3147; C.S., § 5411; I.C.A., § 54-728.

55-730. Record of prior instruments as notice. — Any instrument affecting the title to real property which heretofore or on or before sixty (60) days after the adjournment of the legislature of the state of Idaho for 1947, is copied into the proper book of record, kept in the office of any county recorder, imparts notice of its contents to subsequent purchase [purchasers] and encumbrancers, notwithstanding any defect, omission or informality in the execution of the instrument, or in the certificate of acknowledgment thereof, or the absence of any such certificate; but nothing herein affects the rights of previous purchasers or encumbrancers. Duly certified copies of the record of any such instrument may be read in evidence with like effect as copies of an instrument duly acknowledged and recorded, provided, when such copying in the proper book of record occurred within five (5) years prior to the trial of the action, it be first shown that the original instrument was genuine.

History.

R.S., § 2976; am. 1907, p. 28, § 1; am. R.C., § 3148; compiled and reen. C.L., § 3148; C.S., § 5412; I.C.A., § 54-729; am. 1935, ch. 33, § 1, p. 57; am. 1947, ch. 134, § 1, p. 329.

STATUTORY NOTES

Cross References.

Record as notice, § 55-811.

Compiler's Notes.

The bracketed word "purchasers" in the

first sentence of this section was inserted by the compiler to supply the probable intended term.

The legislature of the state of Idaho for 1947 adjourned on March 7, 1947.

JUDICIAL DECISIONS

Priority of Lien.

Under this section a lien existing on property before a mechanic's lien is attached is protected. *Finlayson v. Waller*, 64 Idaho 618, 134 P.2d 1069 (1943).

Cited in: *Bunnell & Eno Inv. Co. v. Curtis*, 5 Idaho 652, 51 P. 767 (1897).

CHAPTER 8
RECORDING TRANSFERS

SECTION.

- 55-801. What may be recorded.
- 55-802. Recording judgments.
- 55-803. United States patents.
- 55-804. Notices of location.
- 55-805. Acknowledgment necessary to authorize recording.
- 55-806. Power must be recorded before conveyance by attorney.
- 55-807. Recorder's fee to be endorsed on instrument and record.
- 55-808. Place of record.
- 55-809. When deemed recorded.
- 55-810. Books of record.
- 55-811. Record as notice.

SECTION.

- 55-812. Unrecorded conveyance void against subsequent purchasers.
- 55-813. Conveyance defined.
- 55-814. Revocation of power to be recorded.
- 55-815. Unrecorded instruments valid between parties.
- 55-816. Affidavits.
- 55-817. Duration of notice.
- 55-818. Recording of summary of instrument — Effect.
- 55-819. Requirements regarding a request for notice of transfer or encumbrance — Rulemaking.

55-801. What may be recorded. — Any instrument or judgment affecting the title to or possession of real property may be recorded under this chapter.

History.

R.S., § 2990; reen. R.C. & C.L., § 3149; C.S., § 5413; I.C.A., § 54-801.

STATUTORY NOTES

Cross References.

Books of record, manner of recording, and indexes, § 31-2401 et seq.
Certified copy of record of conveyance admissible in evidence, § 9-410.

Deeds, grants and transfers of real estate to be recorded by county recorder, § 31-2402; index, § 31-2404.
Foreclosure judgments conclusive against unrecorded conveyances or liens, § 6-101.

JUDICIAL DECISIONS

ANALYSIS

- Extent of protection.
- Purpose of recording.
- Requirement of acknowledgment.

Extent of Protection.

Protection afforded by the recording acts not to be extended beyond their reasonable

import. *Ewald v. Hufton*, 31 Idaho 373, 173 P. 247 (1918).
Notice contemplated by the recording stat-

utes is not a publication to the world, but only notice to subsequent purchasers and encumbrancers. *Maxwell v. Twin Falls Canal Co.*, 49 Idaho 806, 292 P. 232 (1930).

Word "instrument" does not include notice of claim made by stranger to title. *Maxwell v. Twin Falls Canal Co.*, 49 Idaho 806, 292 P. 232 (1930).

Claim of equitable lien for drilling wells was held not entitled to be recorded. *Maxwell v. Twin Falls Canal Co.*, 49 Idaho 806, 292 P. 232 (1930).

Purpose of Recording.

The primary purpose of the recording statute is to give notice to others that an interest is claimed in real property and, thus, to give protection against bona fide third parties who may be dealing in the same property. *Matheson v. Harris*, 98 Idaho 758, 572 P.2d 861 (1977).

If minor errors or omissions are made in the

recording of an interest in real property, the minor errors could be overlooked if the recorded instrument gives enough notice to subsequent purchasers. *Hymas v. Am. Gen. Fin., Inc. (In re Blair)*, 2000 Bankr. LEXIS 2115 (Bankr. D. Idaho May 18, 2000).

Requirement of Acknowledgment.

Laborers and materialmen have the right to assert and obtain a lien which need not include an acknowledgment for it to be properly recorded against the property upon which they have performed labor or for which they have furnished materials. *A-J Corp. v. GVR Ltd.*, 107 Idaho 1101, 695 P.2d 1240 (1985).

Cited in: *Smith v. Kessler*, 22 Idaho 589, 127 P. 172 (1912); *Panhandle Growers Union v. Scott*, 58 Idaho 70, 70 P.2d 372 (1937); *Johnson v. Casper*, 75 Idaho 256, 270 P.2d 1012 (1954).

RESEARCH REFERENCES

Am. Jur. — 66 Am. Jur. 2d, Records and Recording Laws, §§ 45 to 53.

C.J.S. — 76 C.J.S., Records, § 11.

55-802. Recording judgments. — Judgments affecting the title to or possession of real property, authenticated by the certificate of the clerk of the court in which such judgments were rendered, may be recorded without acknowledgment or further proof.

History.

R.S., § 2991; reen. R.C. & C.L., § 3150; C.S., § 5414; I.C.A., § 54-802.

JUDICIAL DECISIONS

ANALYSIS

Assignment of judgment.

Effect of unrecorded judgment.

Assignment of Judgment.

There is no provision for recording assignment of judgment. *Houtz v. Daniels*, 36 Idaho 544, 211 P. 1088 (1922).

Effect of Unrecorded Judgment.

Judgment entered in a court of competent jurisdiction has the same actual and construc-

tive notice to the parties and privies to the suit and serves the same purpose as is provided by the recording statute. *Smith v. Kessler*, 22 Idaho 589, 127 P. 172 (1912).

Cited in: *A-J Corp. v. GVR Ltd.*, 107 Idaho 1101, 695 P.2d 1240 (1985).

RESEARCH REFERENCES

Am. Jur. — 66 Am. Jur. 2d, Records and Recording Laws, § 51.

C.J.S. — 76 C.J.S., Records, § 11.

55-803. United States patents. — Letters patent and all other instruments that evidence or affect title to real property, geothermal resources, or

minerals including, but not limited to, oil and gas, in this state issued by the United States, executed pursuant to existing law, may be recorded without further proof.

History.

C.S., § 5415; I.C.A., § 54-803; am. 1981, ch. R.S., § 2992; reen. R.C. & C.L., § 3151; 59, § 1, p. 88.

STATUTORY NOTES

Effective Dates.

Section 2 of S.L. 1981, ch. 59, declared an emergency. Approved March 19, 1981.

55-804. Notices of location. — Certificates and notices of location authorized by law, with the affidavits attached, may be recorded without acknowledgment or further proof.

History.

R.S., § 2993; reen. R.C. & C.L., § 3152; C.S., § 5416; I.C.A., § 54-804.

55-805. Acknowledgment necessary to authorize recording. — Before an instrument may be recorded, unless it is otherwise expressly provided, its execution must be acknowledged by the person executing it, or if executed by a corporation, by its president or vice president, or secretary or assistant secretary, or other person executing the same on behalf of the corporation, or if executed in the name of the state of Idaho or any county, political subdivision, municipal, quasi-municipal, or public corporation, by one (1) or more of the officers of such state, county, political subdivision, municipal, quasi-municipal, or public corporation executing the same, or if executed in a partnership name, by one (1) or more of the partners who subscribed the partnership name thereto, or if executed by a limited liability company, by the manager, member or other person executing the same on behalf of the limited liability company, or the execution must be proved and the acknowledgment or proof, certified in substantially the manner prescribed by chapter 7, title 55, Idaho Code; provided, that if such instrument shall have been executed and acknowledged in any other state or territory of the United States, or in any foreign country, according to the laws of the state, territory or country wherein such acknowledgment was taken, the same shall be entitled to record, and a certificate of acknowledgment indorsed upon or attached to any such instrument purporting to have been made in any such state, territory or foreign country, shall be prima facie sufficient to entitle the same to such record.

History.

R.S., § 2994; am. 1907, p. 6, § 1; reen. R.C. & C.L., § 3153; C.S., § 5417; am. 1923, ch. 144, § 3, p. 209; am. 1929, ch. 183, § 6, p. 94; I.C.A., § 54-805; am. 1937, ch. 176, § 3, p. 291; am. 1999, ch. 213, § 4, p. 568.

JUDICIAL DECISIONS

ANALYSIS

Acknowledgment regular on its face.

Construction.
Construction of certificate.
Failure to acknowledge.
Laborers and materialmen's lien.
Legislative intent.
Mechanics' and materialmen's liens.
Missing or defective acknowledgment.
Notarizing blank certificate.
Sheriff's sale certificate.
Void acknowledgment bar to filing.

Acknowledgment Regular on Its Face.

A certificate of acknowledgment complete and regular on its face raises a presumption in favor of the truth of every fact recited therein, which the uncorroborated testimony of the party acknowledging the instrument is insufficient to overcome, and the additional affidavit of the notary that he could not recall any of the circumstances surrounding the execution and acknowledgment of an instrument, although it had sometimes been his practice to take an acknowledgment in the absence of the signing party, was insufficient to impeach the validity of the acknowledgment. *Credit Bureau v. Sleight*, 92 Idaho 210, 440 P.2d 143 (1968).

Construction.

Technical deficiencies in the certificate of acknowledgment will not render the certificate defective if the alleged deficiency can be cured by reference to the instrument itself. *Farm Bureau Fin. Co. v. Carney*, 100 Idaho 745, 605 P.2d 509 (1980).

Construction of Certificate.

The omission of the acknowledger's name in the blank in the certificate will not render the certificate ineffective if his name can be ascertained from other sources, as from the face of the instrument itself or from other parts of the certificate. *Farm Bureau Fin. Co. v. Carney*, 100 Idaho 745, 605 P.2d 509 (1980).

Failure to Acknowledge.

The fact that the assignment of an existing lease agreement was not acknowledged did not render it ineffective as between the parties themselves; the lack of an acknowledgment does not affect a document's validity as between the parties. *Hunt v. Hunt*, 110 Idaho 649, 718 P.2d 560 (Ct. App. 1985).

Laborers and Materialmen's Lien.

Laborers and materialmen have the right to assert and obtain a lien which need not include an acknowledgment for it to be properly recorded against the property upon which they have performed labor or for which they have furnished materials. *A-J Corp. v. GVR Ltd.*, 107 Idaho 1101, 695 P.2d 1240 (1985).

Legislative Intent.

The manifest intent of the legislature in requiring a notary public to execute a certi-

ficate of acknowledgment is to provide protection against the recording of false instruments; the sine qua non of this statutory requirement is the involvement of the notary, a public officer, in a position of public trust. *Farm Bureau Fin. Co. v. Carney*, 100 Idaho 745, 605 P.2d 509 (1980).

Mechanics' and Materialmen's Liens.

Claims of mechanics' and materialmen's liens filed under Title 45, Chapter 5 of the Idaho Code must be acknowledged in accord with this section before they are entitled to be recorded, and the "verification" required under § 45-507 does not serve the same purpose or function of an "acknowledgment" and cannot be a substitute therefor; accordingly, liens that were not acknowledged, or acknowledged but where the certificate of acknowledgment did not substantially comply with Title 55, Chapter 7 of the Idaho Code, were not enforceable against the bankruptcy trustee. *Kloos v. Jacobson*, 30 Bankr. 965 (Bankr. D. Idaho 1983).

Missing or Defective Acknowledgment.

The primary purpose of recording is to give notice to others that an interest is claimed in real property; an instrument recorded without an acknowledgment or with a defective acknowledgment is not entitled to be recorded and cannot impart constructive notice. *Anderson Land Co. v. Small Bus. Admin.*, 718 F.2d 968 (9th Cir. 1983).

Notarizing Blank Certificate.

A notary betrays the public trust when he signs a certificate of acknowledgment with knowledge that the blanks will be filled in later or when he signs a completed certificate of acknowledgment but without requiring the personal appearance of the acknowledgers. *Farm Bureau Fin. Co. v. Carney*, 100 Idaho 745, 605 P.2d 509 (1980).

Sheriff's Sale Certificate.

Where a certificate of sale at sheriff's sale was assigned and the assignment was properly acknowledged, the assignee was entitled to have it recorded. *Panhandle Growers Union v. Scott*, 58 Idaho 70, 70 P.2d 372 (1937).

Void Acknowledgment Bar to Filing.

The acknowledgment on chattel mortgages does not even pretend to comply with the

corporate acknowledgment of § 55-711 and is, therefore, void because it fails to disclose that party making it was a corporate officer of corporation and with the authority to execute it. This being a void acknowledgment, the instrument could not be filed for record under the mandatory provision of this section. Under the circumstances, mortgages had no preference and the mortgagee was the same as the general creditors. *Jordan v. Securities Credit Corp.*, 79 Idaho 284, 314 P.2d 967 (1957).

Cited in: *Bell v. Shields*, 18 Idaho 649, 111 P. 1076 (1910); *Harris v. Reed*, 21 Idaho 364, 121 P. 780 (1912); *Keane v. Kibble*, 28 Idaho 274, 154 P. 972 (1915); *Pacific Coast Joint Stock Land Bank v. Security Prods. Co.*, 56 Idaho 436, 55 P.2d 716 (1936); *Treasure Valley Plumbing & Heating, Inc. v. Earth Resources Co.*, 106 Idaho 920, 684 P.2d 322 (Ct. App. 1984).

RESEARCH REFERENCES

Am. Jur. — 66 Am. Jur. 2d, Records and Recording Laws, § 57.

55-806. Power must be recorded before conveyance by attorney.
— An instrument executed by an attorney in fact must not be recorded until the power of attorney authorizing the execution of the instrument is filed for record in the same office.

History.

R.S., § 2995; reen. R.C. & C.L., § 3154;
C.S., § 5418; I.C.A., § 54-806.

STATUTORY NOTES

Cross References.

Powers of attorney to convey real estate to be recorded by county recorder, § 31-2402; index, § 31-2404.

JUDICIAL DECISIONS

Deed by Attorney in Fact.

While the filing and recording of a deed executed by grantor's attorney in fact, before the filing and recording of power of attorney, does not necessarily render the deed void, as

between the parties, in the absence of intervening rights, it does not constitute constructive notice to subsequent purchasers of the land conveyed. *Hunt v. McDonald*, 65 Idaho 610, 149 P.2d 792 (1944).

RESEARCH REFERENCES

Am. Jur. — 66 Am. Jur. 2d, Records and Recording Laws, §§ 60, 63.

55-807. Recorder's fee to be endorsed on instrument and record.
— The recorder must in all cases indorse the amount of his fee on the instrument recorded, and on the record thereof.

History.

R.S., § 2996; reen. R.C. & C.L., § 3155;
C.S., § 5419; I.C.A., § 54-807.

STATUTORY NOTES

Cross References.

Fees of county recorder, § 31-3205.

RESEARCH REFERENCES

Am. Jur. — 66 Am. Jur. 2d, Records and Recording Laws, § 59.

C.J.S. — 76 C.J.S., Records, §§ 21 to 23.

55-808. Place of record. — Instruments entitled to be recorded must be recorded by the county recorder of the county in which the real property affected thereby is situated.

History.

1863, p. 528, § 23; R.S., § 2997; reen. R.C.

& C.L., § 3156; C.S., § 5420; I.C.A., § 54-808.

RESEARCH REFERENCES

Am. Jur. — 66 Am. Jur. 2d, Records and Recording Laws, § 55.

55-809. When deemed recorded. — An instrument is deemed to be recorded when, being duly acknowledged, or proved and certified, it is deposited in the recorder's office with the proper officer for record.

History.

R.S., § 2998; reen. R.C. & C.L., § 3157; C.S., § 5421; I.C.A., § 54-809.

JUDICIAL DECISIONS

ANALYSIS

Improperly recorded instruments.
Neglect of officers.

Improperly Recorded Instruments.

If a party submits an instrument governing real property to be recorded but the recording official fails to properly record it, subsequent purchasers of that real property are still on notice of the instrument. *Miller v. Simonson*, 140 Idaho 287, 92 P.3d 537 (Ct. App. 2004).

Subsequent purchaser must bear the risk of improperly recorded instruments when the recording party has fully satisfied the requirements of the Idaho recording statute. *Miller v. Simonson*, 140 Idaho 287, 92 P.3d 537 (Ct. App. 2004).

proper custodian and fee tendered. Failure of officer to place thereon proper filing marks does not destroy filing. *O'Connor v. Board of County Comm'rs*, 17 Idaho 346, 105 P. 560 (1909).

Duties of a recording officer do not impose any further recording requirements; therefore, a purchaser of land had constructive notice of covenants, conditions, and restrictions imposed upon subdivided land, despite the fact that a recording official improperly recorded the document under the incorrect name. *Miller v. Simonson*, 140 Idaho 287, 92 P.3d 537 (2004).

Neglect of Officers.

Paper is recorded when deposited with

Cited in: *Adams v. Anderson*, 142 Idaho 208, 127 P.3d 111 (2005).

RESEARCH REFERENCES

C.J.S. — 76 C.J.S., Records, § 20.

55-810. Books of record. — Grants and conveyances absolute in terms, are to be recorded in one set of books and mortgages in another or in an approved electronic storage system containing segregated searchable and retrieval files.

History. C.S., § 5422; I.C.A., § 54-810; am. 2005, ch. R.S., § 2999; reen. R.C. & C.L., § 3158; 243, § 9, p. 756.

RESEARCH REFERENCES

Am. Jur. — 66 Am. Jur. 2d, Records and Recording Laws, §§ 66 to 70. **C.J.S.** — 76 C.J.S., Records, § 15.

55-811. Record as notice. — Every conveyance of real property acknowledged or proved, and certified, and recorded as prescribed by law, from the time it is filed with the recorder for record, is constructive notice of the contents thereof to subsequent purchasers and mortgages [mortgagees].

Every conveyance of real property acknowledged or proved, and certified, and recorded as prescribed by law, and which is executed by one who thereafter acquires an interest in said real property by a conveyance which is constructive notice as aforesaid, is, from the time such latter conveyance is filed with the recorder for record, constructive notice of the contents thereof to subsequent purchasers and mortgagees.

History. & C.L., § 3159; C.S., § 5423; I.C.A., § 54-1863, p. 528, § 24; R.S., § 3000; reen. R.C. 811; am. 1941, ch. 119, § 1, p. 240.

STATUTORY NOTES

Cross References.

Record as notice, § 55-730.

Compiler's Notes.

The bracketed insertion at the end of the first paragraph was added by the compiler to supply the probable intended word.

Effective Dates.

Section 2 of S.L. 1941, ch. 119 declared an emergency. Approved March 10, 1941. The title of said act did not provide for an emergency.

JUDICIAL DECISIONS

ANALYSIS

Conveyance by strangers.
Conveyance not acknowledged.
Misrepresentation.
Notice.
—Recording.
—Sufficiency.

Conveyance by Strangers.

Conveyance of real property which this section provides shall constitute constructive notice to "subsequent purchasers and mortgagees," is a conveyance made by the person from whom such "subsequent purchaser or mortgagee" is compelled to deraign his title and has no reference to, and does not include, conveyances made by strangers to the record title. Harris v. Reed, 21 Idaho 364, 121 P. 780 (1912).

If a mortgage was executed by one who was at the time a stranger to the title, recording of such mortgage does not constitute constructive notice to an intending purchaser of a

prior unrecorded deed to mortgagor. Jackson v. Lee, 47 Idaho 589, 277 P. 548 (1929).

Conveyance Not Acknowledged.

Under provisions of this section, a recorded conveyance of real property which has not been acknowledged or proved and certified, as required by law, does not impart constructive notice of its contents to subsequent purchasers and mortgagees. Harris v. Reed, 21 Idaho 364, 121 P. 780 (1912).

Misrepresentation.

This section does not preclude an action by a purchaser of real property against a seller and realtors for misrepresentation concerning

the availability of the property for commercial purposes. *Large v. Cafferty Realty, Inc.*, 123 Idaho 676, 851 P.2d 972 (1993).

Notice.

—Recording.

Notice is imparted by proper recording of an instrument affecting the title to real property, and a lien existing on property before a mechanic's lien attaches has priority over such lien and § 45-506, relating to priority of a mechanic's lien over liens unrecorded at the time work was done or materials were commenced to be furnished has no application. *Finlayson v. Waller*, 64 Idaho 618, 134 P.2d 1069 (1943).

In a suit by landowners to recover damages for flooding of land by power company, an easement executed by former owners in favor of power company releasing power company for all claims of damage both present and future for overflowing of land caused by fluctuation of the flow of the river, and granting the power company the right to continue the manipulation and fluctuation of the flow of the river so long as the future fluctuation did not exceed that heretofore occurring, and which was duly recorded, operated as an estoppel of record of plaintiff's suit for damages. *Griffith v. Utah Power & Light Co.*, 226 F.2d 661 (9th Cir. 1955).

This section provides that a recorded instrument conveying an interest in real property gives notice "to subsequent purchasers and mortgagees." However, it does not give constructive notice to prior parties in the chain of title; thus, recordation of an assignment by a buyer of an interest in land to a third party did not give the seller of the land constructive notice of such assignment. *Lockhart Co. v. B.F.K., Ltd.*, 107 Idaho 633, 691 P.2d 1248 (Ct. App. 1984).

Duties of a recording officer do not impose any further recording requirements; therefore, a purchaser of land had constructive

notice of covenants, conditions, and restrictions imposed upon subdivided land, despite the fact that a recording official improperly recorded the document under the incorrect name. *Miller v. Simonson*, 140 Idaho 287, 92 P.3d 537 (2004).

—Sufficiency.

Where an earnest money agreement was signed by all parties but not acknowledged by the sellers and was recorded with an acknowledged cover sheet captioned "Notice," the extent of the interest claimed was clear for all to see and the attachment of the cover sheet had no additional effect. *Matheson v. Harris*, 98 Idaho 758, 572 P.2d 861 (1977).

Plats and the master plan for planned unit development, which were on file in the proper office and were properly acknowledged and certified, imparted notice of their contents to defendant, the subsequent purchaser. Therefore, defendant was, by law, on notice the recorded third replat contained a note which identified the master plan on file in the planning office of the county, and thus, this recorded instrument gave defendant notice that he could only build an additional eighteen (18) units in a block of the development. *Haugh v. Smelick*, 126 Idaho 481, 887 P.2d 26 (1993).

According to Idaho's recording statutes, a mortgage recorded first in time had priority against all other subsequent mortgagees where the title company executed and recorded its mortgage first (twelve days before the landowners) and the owners were not good faith purchasers because they knew of the company's mortgage, such that because the owners did not record first and had at least constructive notice of the company's mortgage, the company's mortgage took priority. *Estate of Skvorak v. Sec. Union Title Ins. Co.*, 140 Idaho 16, 89 P.3d 856 (2004).

Cited in: *Aitken v. Gill*, 108 Idaho 900, 702 P.2d 1360 (Ct. App. 1985); *Adams v. Anderson*, 142 Idaho 208, 127 P.3d 111 (2005).

RESEARCH REFERENCES

Am. Jur. — 66 Am. Jur. 2d, Records and Recording Laws, § 71 et seq.

C.J.S. — 76 C.J.S., Records, § 1.

55-812. Unrecorded conveyance void against subsequent purchasers. — Every conveyance of real property other than a lease for a term not exceeding one (1) year, is void as against any subsequent purchaser or mortgagee of the same property, or any part thereof, in good faith and for a valuable consideration, whose conveyance is first duly recorded.

History.

1863, p. 528, § 25; R.S., § 3001; reen. R.C.

& C.L., § 3160; C.S., § 5424; I.C.A., § 54-812.

JUDICIAL DECISIONS

ANALYSIS

Actual knowledge.
Bona fide purchaser.
Constructive notice.
Defective deed.
Deeds.
First recorded.
Good faith.
Judgments.
Mortgages.
Physical possession.
Valuable consideration.
When record effective.

Actual Knowledge.

When a subsequent encumbrancer or purchaser has actual knowledge of a prior interest, it makes no difference whether the prior interest was properly acknowledged and recorded. *Farm Bureau Fin. Co. v. Carney*, 100 Idaho 745, 605 P.2d 509 (1980).

Bona Fide Purchaser.

One who has notice or knowledge of a previous sale of real property, or who has notice or knowledge of such facts and circumstances as would lead a reasonably prudent man to discover that a previous sale had been made, is not a purchaser in good faith within the meaning of this section; but one who purchases vacant property and procures an abstract of title which fails to show a previous conveyance, because the same was not recorded, and pays the purchase-price without any knowledge of such previous conveyance, is a purchaser in good faith and is entitled to the property as against holder of the prior unrecorded deed. *Froman v. Madden*, 13 Idaho 138, 88 P. 894 (1907).

Defense of good faith cannot be used to create a title, where not even a defective title exists. *Ewald v. Hufton*, 31 Idaho 373, 173 P. 247 (1918).

Distinction is made by legislature between encumbrancers and purchasers in good faith and purchasers for value. *Millick v. Stevens*, 44 Idaho 347, 257 P. 30 (1927).

Assignee of junior mortgage duly recorded takes it free from lien of prior mortgage which was unrecorded, unless he had notice thereof or has failed to record his assignment, notwithstanding his assignor's knowledge of prior mortgage. *Adams v. Satterberg*, 46 Idaho 271, 267 P. 445 (1928).

Subsequent mortgagee not making proper inquiry with respect to unreleased prior mortgage is not entitled to protection of statute. *Merchants Trust Co. v. Davis*, 49 Idaho 494, 290 P. 383 (1930).

Owner of easement across 42-foot strip of land could not claim to be a bona fide pur-

chaser based on vendors' agreement to devise the strip to easement owner upon the death of surviving spouse, where prior to parting with consideration for vendors' promise to convey the strip in the future easement owner had acquired actual knowledge of an earlier unrecorded contract wherein vendors granted defendants the preemptive right of first refusal if the strip was offered for sale. *Garmo v. Clanton*, 97 Idaho 696, 551 P.2d 1332 (1976).

Where a purchaser of real estate is in possession of the property, there can be no bona fide purchaser from the vendor. *Fitzgerald v. Thornley* (In re Lewis), 19 Bankr. 548 (Bankr. D. Idaho 1982).

It has long been established in Idaho that a purchaser under an unrecorded real estate contract who is in physical possession of the property purchased will prevail over a subsequent purchaser of the property from the original seller. *Fitzgerald v. Thornley* (In re Lewis), 19 Bankr. 548 (Bankr. D. Idaho 1982).

Even if purchaser of land had prior notice of water association's use of a well on the purchased land, that prior notice did not create any real property right in the association; thus, there was no basis for association's assertion that purchaser was not a bona fide purchaser in good faith. *Bear Island Water Ass'n v. Brown*, 125 Idaho 717, 874 P.2d 528 (1994).

Constructive Notice.

Where subsequent purchaser knew that the prior purchaser was occupying the lot in question and was conducting a commercial business on it, subsequent purchaser had constructive notice such as to require an inquiry of prior purchaser's claim and the result of his failure to do so was that the unrecorded deed of prior purchaser prevailed over subsequent purchaser's recorded deed. *Fajen v. Powlus*, 96 Idaho 625, 533 P.2d 746 (1975).

Purchaser could not use this section to defeat a prior unrecorded interest in a water well if purchaser had prior actual or constructive notice of that interest. *Bear Island Water*

Ass'n v. Brown, 125 Idaho 717, 874 P.2d 528 (1994).

Defective Deed.

Trustee, in the place of a bona fide purchaser, could avoid a transfer of property allegedly made to a creditor to the extent that the deed of trust that was recorded with the mortgage improperly described the property that was to be encumbered by the loan agreement. *Hymas v. Am. Gen. Fin., Inc. (In re Blair)*, 2000 Bankr. LEXIS 2115 (Bankr. D. Idaho May 18, 2000).

Deeds.

Unrecorded deed of ditch was held invalid against purchaser. *Swank v. Sweetwater Irrigation & Power Co.*, 15 Idaho 353, 98 P. 297 (1908).

Whether quitclaim deed from mortgagee to mortgagor is effective as a release and satisfaction of mortgage lien depends on the intent of the parties. *Merchants Trust Co. v. Davis*, 49 Idaho 494, 290 P. 383 (1930).

First Recorded.

The instrument first recorded takes precedence where the recording party is a holder for valuable consideration and in good faith. *Sun Valley Land & Minerals, Inc. v. Burt*, 123 Idaho 862, 853 P.2d 607 (Ct. App. 1993).

Under this section, the first good faith purchaser to record evidence of title will prevail. *Young v. Washington Fed. Sav. & Loan Ass'n*, 156 Bankr. 282 (Bankr. D. Idaho 1993).

Good Faith.

The act of recording a conveyance does not cut off rights not created by a writing without regard to whether or not the recording party is a good faith purchaser without notice of the rights. *Langroise v. Becker*, 96 Idaho 218, 526 P.2d 178 (1974).

One who purchases or encumbers property with notice of conflicting claims, or who fails to investigate an obvious conflicting claim does not take in "good faith" and will not prevail over a prior purchaser. *Langroise v. Becker*, 96 Idaho 218, 526 P.2d 178 (1974).

Judgments.

Judgment entered in a court of competent jurisdiction has the same actual and constructive notice to the parties and privies to the suit and serves the same purpose as is provided by the recording statutes. *Smith v. Kessler*, 22 Idaho 589, 127 P. 172 (1912).

Mortgages.

Mortgage was upheld as against prior deed; fraud also involved. *Blucher v. Shaw*, 26 Idaho 497, 144 P. 342 (1914).

Mortgage was upheld as lien even upon unrecorded contract making water appurtenant to land. *Ireton v. Idaho Irrigation Co.*, 30 Idaho 310, 164 P. 687 (1917).

By term "mortgagee" legislature intended to include any person occupying, either as original mortgagee or as assignee of mortgage, position of mortgagee. *Adams v. Satterberg*, 46 Idaho 271, 267 P. 445 (1928).

Where record shows a release of a mortgage by mortgagee, subsequent purchasers or encumbrancers in good faith and for value are protected against any claim of an assignee under an unrecorded assignment. *Millick v. O'Malley*, 47 Idaho 106, 273 P. 947 (1928).

Where lien claimant had no notice of mortgage at time labor and material were furnished, and where such mortgage was unrecorded, it will not be allowed superiority over lien. *Poynter v. Fargo*, 48 Idaho 271, 281 P. 1111 (1929).

Mortgagee of a ranch and water right is not chargeable with notice of limitation on water right by the fact that mortgagor's applications for loan, which it rejected, showed lesser water right than that shown by record, and stated that land did not require surface irrigation. *Federal Land Bank v. Union Cent. Life Ins. Co.*, 54 Idaho 161, 29 P.2d 1009 (1934).

One taking mortgage on ranch and water right had right, as against prior mortgagee of mortgagor's other ranch, to rely on record which showed water right taken was appurtenant to first ranch and which failed to show previous mortgage of water right. *Federal Land Bank v. Union Cent. Life Ins. Co.*, 54 Idaho 161, 29 P.2d 1009 (1934).

Evidence required finding that mortgagee of ranch and water right originally appurtenant thereto acquired right in good faith, without actual or constructive notice of claim of another mortgagee under prior mortgage, given by mortgagor on different ranch. *Federal Land Bank v. Union Cent. Life Ins. Co.*, 54 Idaho 161, 29 P.2d 1009 (1934).

According to Idaho's recording statutes, a mortgage recorded first in time had priority against all other subsequent mortgagees where the title company executed and recorded its mortgage first (twelve days before the landowners) and the owners were not good faith purchasers because they knew of the company's mortgage, such that because the owners did not record first and had at least constructive notice of the company's mortgage, the company's mortgage took priority. *Estate of Skvorak v. Sec. Union Title Ins. Co.*, 140 Idaho 16, 89 P.3d 856 (2004).

Physical Possession.

Where the purchasers of real estate from a debtor were in physical possession of the property for a period of approximately six years following the purchase, the rights of the purchasers prevailed over the trustee in his attempt to avoid the transfer of the debtor's interests in the real property, even though the

purchasers had not recorded the real estate contract. *Fitzgerald v. Thornley* (In re Lewis), 19 Bankr. 548 (Bankr. D. Idaho 1982).

Valuable Consideration.

While natural love and affection is good consideration, it is not valuable consideration within meaning of this section. *Gardiner v. Gardiner*, 36 Idaho 664, 214 P. 219 (1923).

Nothing passes under deed without valuable consideration if grantor has theretofore executed and delivered deed of premises to another. *Gardiner v. Gardiner*, 36 Idaho 664, 214 P. 219 (1923).

Where subsequent deed is supported by good, as distinguished from valuable, consideration it cannot prevail. *Hiddleston v. Cahoon*, 37 Idaho 142, 214 P. 1042 (1923).

This section, in effect, provides that unrecorded deed is void as against subsequent conveyance which is duly recorded, when, and only when, subsequent conveyance is in good faith and for valuable consideration.

Hiddleston v. Cahoon, 37 Idaho 142, 214 P. 1042 (1923).

When Record Effective.

A duly recorded interest is effective against prior unrecorded interests only where the recorded interest is taken for a valuable consideration and without knowledge, either actual or constructive, that unrecorded interests exist. *Farm Bureau Fin. Co. v. Carney*, 100 Idaho 745, 605 P.2d 509 (1980).

Cited in: *Griffeth v. Utah Power & Light Co.*, 226 F.2d 661 (9th Cir. 1955); *Peacock v. Fairbairn*, 45 Idaho 628, 264 P. 231 (1928); *Pacific Coast Joint Stock Land Bank v. Security Prods. Co.*, 56 Idaho 436, 55 P.2d 716 (1936); *Johnson v. Casper*, 75 Idaho 256, 270 P.2d 1012 (1954); *Kloos v. Jacobson*, 30 Bankr. 965 (Bankr. D. Idaho 1983); *Lind v. Perkins*, 107 Idaho 901, 693 P.2d 1103 (Ct. App. 1984); *Wood v. Simonson*, 108 Idaho 699, 701 P.2d 319 (Ct. App. 1985).

RESEARCH REFERENCES

Am. Jur. — 66 Am. Jur. 2d, Records and Recording Laws, § 117 et seq.

55-813. Conveyance defined. — The term “conveyance” as used in this chapter, embraces every instrument in writing by which any estate or interest in real property is created, alienated, mortgaged or encumbered, or by which the title to any real property may be affected, except wills.

History.

1863, p. 528, § 35; R.S., § 3002; reen. R.C.

& C.L., § 3161; C.S., § 5425; I.C.A., § 54-813.

JUDICIAL DECISIONS

ANALYSIS

- Effect of recording laws.
- Extent of application.
- Leases.
- Mortgages.
- Record as notice.

Effect of Recording Laws.

It is possible for a subsequent purchaser to acquire a paramount title through the medium of the recording laws, relegating prior purchaser to an action for damages against vendor. *Madden v. Caldwell Land Co.*, 16 Idaho 59, 100 P. 358 (1909).

Protection afforded by the recording acts is purely statutory and is not to be extended beyond their reasonable import. They do not apply where a title vests by virtue of law and not through a conveyance. *Ewald v. Hufton*, 31 Idaho 373, 173 P. 247 (1918).

Escrow agreement in which buyer promised

to pay a certain sum to seller in return for two acres and various interests in the land including nonexclusive use of airport was a conveyance within the meaning of this section, and when two recorded conveyances purport to convey conflicting interests in real property, the conveyance first recorded controls. Thus, where escrow agreement was recorded in 1989 and deed for sale of remainder of land owned by seller was recorded in 1991, the escrow agreement entitled buyer of the two acres to an easement of nonexclusive use of the airport even though the easement for nonexclusive use of the airport had been omit-

ted from the deed for sale of the two acres. *West v. Bowen*, 127 Idaho 128, 898 P.2d 59 (1995).

Extent of Application.

Definition herein contained is limited in its application to chapter of statutes relating to recording of instruments. *Fargo v. Bennett*, 35 Idaho 359, 206 P. 692 (1922).

Leases.

A lease for more than one year or a mortgage is such a conveyance or encumbrance that it falls within the prohibition that a husband acting as agent for the community cannot execute same unless his wife joins with him in executing the instrument. *Morgan v. Firestone Tire & Rubber Co.*, 68 Idaho 506, 201 P.2d 976 (1948).

Mortgages.

A "mortgage" is a "conveyance," within the meaning of statutory definition of term "conveyance," and is included within the scope of statute invalidating conveyances of realty to foreign corporations failing to comply with statutory requirements for doing business within state, notwithstanding a mortgage does not pass title to mortgaged property. *John Hancock Mut. Life Ins. Co. v. Girard*, 57 Idaho 198, 64 P.2d 254 (1936).

Record as Notice.

Plats and the Master Plan, which were on

file in the proper office and were properly acknowledged and certified, imparted notice of their contents to defendant, the subsequent purchaser. Therefore defendant was, by law, on notice the recorded third replat contained Note 6 which identified the Master Plan on file in the planning office of the county, and thus, this recorded instrument gave defendant notice that he could only build an additional eighteen (18) units in Block 3 in a cluster configuration as located on the third replat. *Haugh v. Smelick*, 126 Idaho 481, 887 P.2d 26 (1993).

Record of survey constituted a properly recorded conveyance; where it purported to transfer the disputed property, it created, alienated, mortgaged or encumbered the title of both lots, it was in writing, it contained a sufficient description of the property, it contained the name of the grantee, and it clearly indicated the legal description of the subject property and the lots. *Adams v. Anderson*, 142 Idaho 208, 127 P.3d 111 (2005).

Cited in: *Federal Land Bank v. Union Cent. Life Ins. Co.*, 54 Idaho 161, 29 P.2d 1009 (1934); *Abbl v. Morrison*, 64 Idaho 489, 134 P.2d 94 (1942); *Langroise v. Becker*, 96 Idaho 218, 526 P.2d 178 (1974); *City of Kellogg v. Mission Mt. Interests Ltd.*, 135 Idaho 239, 16 P.3d 915 (2000); *West Wood Invs. v. Acord*, 141 Idaho 75, 106 P.3d 401 (2005).

55-814. Revocation of power to be recorded. — No instrument containing a power to convey or execute instruments affecting real property, which has been recorded, is revoked by any act of the party by whom it was executed, unless the instrument containing such revocation is also acknowledged or proved, certified and recorded in the same office in which the instrument containing the power was recorded.

History.

1863, p. 528, § 27; R.S., § 3003; reen. R.C.

& C.L., § 3162; C.S., § 5426; I.C.A., § 54-814.

55-815. Unrecorded instruments valid between parties. — An unrecorded instrument is valid as between the parties thereto and those who have notice thereof.

History.

1863, p. 528, § 23; R.S., § 3004; reen. R.C.

& C.L., § 3163; C.S., § 5427; I.C.A., § 54-815.

JUDICIAL DECISIONS

Unrecorded Conveyances.

Unrecorded conveyance made more than four months before petition in bankruptcy is valid as between parties thereto. *Peacock v. Fairbairn*, 45 Idaho 628, 264 P. 231 (1928).

Cited in: *Keane v. Kibble*, 28 Idaho 274, 154 P. 972 (1915); *Goodman v. Lothrop*, 143 Idaho 622, 151 P.3d 818 (2007).

55-816. Affidavits. — Any affidavit setting forth facts showing or explaining marital status, identity of persons, possession of real property when the title thereof is deraigned through tax deed, delivery of deed by grantor during grantor's lifetime, occupation of real property as a homestead, date of birth, date of death, date of marriage, or place of residence, with respect to any person mentioned in any recorded instrument affecting title to real property, and also any affidavit as to the identification of plats or descriptions of real property signed by the grantor and grantee named in the document of transfer which contains the descriptions being corrected or, if the grantor is not available, then the affidavit must be signed by the grantee and indexed under the name of both the grantor and grantee, may be recorded in the office of the county recorder of the county wherein the real property is situate; and any such recorded affidavit or the record or certified copy thereof whether heretofore or hereafter recorded shall constitute a part of the record of title to the real property to which it relates and may be received in evidence in any cause affecting the title to such real property, by all courts and all boards, and before all officers, in the state of Idaho as part of such record of title.

History.

1945, ch. 84, § 1, p. 130; am. 2000, ch. 377, § 1, p. 1237.

55-817. Duration of notice. — No public record of any mortgage or other lien on real property, given prior to July 1, 1945, shall constitute notice of the existence or contents of such mortgage or lien, to subsequent purchasers or encumbrancers of the property affected thereby, for a longer period than ten (10) years from the date of maturity of such obligation or indebtedness, as changed by extension, if any, of the time of payment, filed for record before the expiration of said period of ten (10) years, except as provided in section 2 hereof. If the public records do not disclose the date of maturity, then the date of the execution of such mortgage or lien shall be deemed the date of maturity of such obligation or indebtedness.

History.

1935, ch. 107, § 1, p. 256; am. 1951, ch. 127, § 1, p. 295.

STATUTORY NOTES

Compiler's Notes.

Section 2 of S.L. 1951, ch. 127, read: "If the said period of ten years has expired, or will expire before September 1, 1951, the holder or owner of the obligation or indebtedness secured by such mortgage or lien shall have until September 1, 1951, within which to file for record, in the county or counties where said mortgage or lien is recorded, an agreement or affidavit showing the date of payment of such obligation or indebtedness as extended. Such agreement or affidavit shall describe the property embraced in such mortgage or lien and give the book and page where

such mortgage or lien appears of record. The county recorder shall note on the record of such mortgage or other lien the due date thereof as shown by such affidavit, and shall also note on such record the book and page where such agreement or affidavit is recorded."

S.L. 1935, ch. 107, § 2, referred to at the end of the first sentence, read as follows: "If the said period of ten years has expired, or will expire before September 1, 1935, the holder or owner of the obligation or indebtedness secured by such mortgage or lien shall have until September 1, 1935 within which to

file for record, in the county or counties where said mortgage or lien is recorded, an agreement or affidavit showing the date of payment of such obligation or indebtedness as extended. Such agreement or affidavit shall describe the property embraced in such mortgage or lien and give the book and page where

such mortgage or lien appears of record. The county recorder shall note on the record of such mortgage or other lien the due date thereof as shown by such affidavit, and shall also note on such record the book and page where such agreement or affidavit is recorded."

JUDICIAL DECISIONS

Record Notice.

Record notice of existence and nonpayment of mortgage does not entitle purchaser of mortgaged land to quiet title as against mortgage though debt is barred by limitation pe-

riod, if purchaser is in privity with original mortgagor and knows that mortgage in fact has not been paid. *Trusty v. Ray*, 73 Idaho 232, 249 P.2d 814 (1952).

RESEARCH REFERENCES

A.L.R. — Construction and effect of "marketable record title" statutes. 31 A.L.R.4th 11.

55-818. Recording of summary of instrument — Effect. — A summary of any instrument creating an interest in, or affecting the title to or possession of real property, may be recorded under this chapter or the laws of this state if the requirements of this section are substantially met. A summary of the instrument shall be signed and acknowledged by all parties to the original instrument. The summary of the instrument shall clearly state: the names of the parties to the original instrument, the complete mailing address of the grantee, the title and date of the instrument, a description of the interest or interests in real property created by the instrument, and the legal description of the property. Other elements of transaction may be stated in the summary. If the requirements of this section are met, the summary of the instrument may be recorded under the provisions of this chapter and, as to the contents of the summary only, it shall have the same force and effect as if the original instrument had been recorded, and constructive notice shall be deemed to be given concerning the contents of the summary and the existence of the instrument to any subsequent purchasers, mortgagees or other persons or entities that acquire an interest in the real property.

History.

I.C., § 55-818, as added by 1987, ch. 353,
§ 1, p. 785; am. 1989, ch. 105, § 2, p. 238.

55-819. Requirements regarding a request for notice of transfer or encumbrance — Rulemaking. — (1) If the department of health and welfare has recorded a request for notice of transfer or encumbrance pursuant to section 56-225, Idaho Code:

(a) When a title insurance company or agent discovers the presence of a request for notice of transfer or encumbrance recorded in the real property records in the county in which the property described in such notice is located while performing a title search on such property and any individual identified in such notice is the record owner of such property, the title

insurance company or agent shall disclose the presence of the request for notice of transfer or encumbrance in any commitment to offer to issue a title insurance product to insure title to such real property; and

(b) If, after the date of the recording the request for notice of transfer or encumbrance described in subsection (1)(a) of this section, the individual identified in such request for notice transfers or encumbers real property described in such filing, such individual, his agent or family member shall provide the department of health and welfare with a notice of transfer or encumbrance within ten (10) days after the date of the transfer or encumbrance. For the purposes of this subsection (1)(b), a title insurance company or agent shall not be deemed or appointed an agent of the individual identified in the request for notice of transfer or encumbrance. The department of health and welfare shall adopt by rule a model form for notice of transfer or encumbrance to be used by said individual when notifying the department.

(2) If the department of health and welfare has caused to be recorded a termination of request for notice of transfer or encumbrance in the grants and conveyances records pursuant to section 56-225, Idaho Code, or if no individual identified in the request for notice of transfer or encumbrance is the record owner of the real property described therein, the title insurance company or agent is not required to disclose the notice of transfer or encumbrance as required by subsection (1)(a) of this section, and an individual transferring or encumbering the real property after the date of such recording is not required to provide the notice of transfer or encumbrance required by subsection (1)(b) of this section.

(3) The notice of transfer or encumbrance described in subsection (1)(a) of this section is personal to the individual named therein and shall not constitute a lien or encumbrance on, or prevent the transfer or encumbrance of, the property described therein. A title insurance company or agent shall have no liability to the department of health and welfare or any person or entity for failing to discover, or for disclosing, the request for notice of transfer or encumbrance as required by subsection (1)(a) of this section.

History.

I.C., § 55-819, as added by 2010, ch. 90,
§ 1, p. 174.

STATUTORY NOTES

Cross References.

Department of health and welfare, § 56-1001 et seq.

CHAPTER 9

UNLAWFUL TRANSFERS

SECTION.

55-901. Fraudulent conveyances of land.
55-902. Grantee must be privy to fraud.

SECTION.

55-903. Power of revocation — When deemed executed.

SECTION.

- 55-904. Power of revocation not subject to exercise before grant — When deemed executed.
- 55-905. Fraudulent transfers of personalty.
- 55-906. Transfers in fraud of creditors.
- 55-907. Transfers in fraud of creditors — Delivery and change of possession.
- 55-908. Fraud is a question of fact.
- 55-909. Title of purchaser not impaired.
- 55-910. Uniform fraudulent transfer act — Definitions.
- 55-911. Insolvency defined.
- 55-912. Value defined.

SECTION.

- 55-913. Transfers fraudulent as to present and future creditors.
- 55-914. Transfers fraudulent as to present creditors.
- 55-915. When transfer is made or obligation is incurred.
- 55-916. Remedies of creditors.
- 55-917. Defenses, liability, and protection of transferee.
- 55-918. Extinguishment of a cause of action.
- 55-919. Application of general law.
- 55-920. Uniformity of application and construction.
- 55-921. Short title.
- 55-922. Title of act. [Repealed.]

55-901. Fraudulent conveyances of land. — Every instrument, other than a will, affecting an estate in real property, including every charge upon real property, or upon its rents or profits, made with intent to defraud prior or subsequent purchasers thereof, or encumbrancers thereon, is void as against every purchaser or encumbrancer, for value, of the same property, or the rents or profits thereof.

History.

1863, p. 540, § 1; R.S., § 3015; reen. R.C. & C.L., § 3164; C.S., § 5428; I.C.A., § 54-901.

STATUTORY NOTES**Cross References.**

Decedents' estates, actions to set aside fraudulent conveyances, § 15-3-710.

Fraudulent practices, § 55-1812.

JUDICIAL DECISIONS

ANALYSIS

Actual fraud.

Conflict of laws.

Intent.

Question of fact and intent.

Actual Fraud.

Execution and delivery of trust deed by father, who was experiencing business difficulties, to daughter, creating first mortgage lien on father's property in favor of daughter, was not a fraudulent conveyance where the deed was given for adequate consideration, consisting of prior advances and expenditures by daughter, and where evidence presented by judgment creditor of father failed to establish actual fraud or "badges of fraud" from which an inference of actual fraud might be warranted. *Mohar v. McLelland Lumber Co.*, 95 Idaho 38, 501 P.2d 722 (1972).

Conflict of Laws.

Where a title to an Idaho mining claim was conveyed to an Arizona corporation, the law of

Arizona would control the rights and liabilities of the corporation, as respects avoidance of the conveyance for fraud in representing that the stock would be fully paid and nonassessable, unless the Arizona law was contrary to the public policy of Idaho. *Bruun v. Hanson*, 103 F.2d 685 (9th Cir.), cert. denied, 308 U.S. 571, 60 S. Ct. 86, 84 L. Ed. 479 (1939).

A conveyance of Idaho mining claims to an Arizona corporation was not subject to attack for fraud in procurement on the ground that the representation that the stock in the Arizona corporation would be fully paid and nonassessable was contrary to law and incapable of performance in the absence of a showing of the Arizona statute or a decision invalidating such a promise, since, under the

rule prevailing in Idaho, such a contract would be upheld. *Bruun v. Hanson*, 103 F.2d 685 (9th Cir.), cert. denied, 308 U.S. 571, 60 S. Ct. 86, 84 L. Ed. 479 (1939).

Intent.

If debtor transfers assets with the intent to defraud creditors, transfer is void as against judgment creditor, even though debtor is not

insolvent. *Hilliard v. Sisil*, 192 F.2d 800 (9th Cir. 1951).

Question of Fact and Intent.

Where different minds might reach different conclusions on the evidence, meager evidence, if it is of a substantial nature and character, is sufficient to sustain the findings of the trier of facts. *Lingenfelter v. Eby*, 68 Idaho 134, 190 P.2d 130 (1948).

RESEARCH REFERENCES

Am. Jur. — 37 Am. Jur. 2d, *Fraudulent Conveyances*, §§ 83 to 88.

C.J.S. — 37 C.J.S., *Fraudulent Conveyances*, §§ 8 to 21.

A.L.R. — Gift or other voluntary transfer by husband as fraud. 64 A.L.R.3d 187.

Rule denying recovery of property to one

who conveyed to defraud creditors as applicable where the claim which motivated the conveyance was never established. 6 A.L.R.4th 862.

Creditor's right to prevent debtor's renunciation of benefit under will or debtor's election to take under will. 39 A.L.R.4th 634.

55-902. Grantee must be privy to fraud. — No instrument is to be avoided under the last section, in favor of a subsequent purchaser or encumbrancer having notice thereof at the time his purchase was made, or his lien acquired, unless the person in whose favor the instrument was made was privy to the fraud intended.

History.

1863, p. 540, § 2; R.S., § 3016; reen. R.C. & C.L., § 3165; C.S., § 5429; I.C.A., § 54-902.

JUDICIAL DECISIONS

ANALYSIS

Close relationship.
Inadequate consideration.
Inference of actual fraud.
Intent to defraud.

Close Relationship.

Although the existence of a close relationship between debtor and transferee invites close scrutiny, it is not a "badge of fraud" per se and must be supplemented by other proof of bad faith to establish a prima facie case of fraud. *Mohar v. McLelland Lumber Co.*, 95 Idaho 38, 501 P.2d 722 (1972).

Inadequate Consideration.

Knowledge and participation of grantees is not required to render transfer void, where there is gross inadequacy of consideration for transfer. *Buhl State Bank v. Glander*, 56 Idaho 543, 56 P.2d 757 (1936).

Inference of Actual Fraud.

Although actual fraud must be proven by clear and convincing evidence, an inference of actual fraud may be warranted where certain badges of fraud attend the conveyance and are not adequately explained. *Mohar v.*

McLelland Lumber Co., 95 Idaho 38, 501 P.2d 722 (1972).

Inference of actual fraud in connection with transfer from father to daughter was not warranted by informality of the transaction, time gap between execution and recording of trust deed and financial difficulty of father where informality naturally resulted from close relationship, the deed was recorded promptly on delivery to daughter and the deed was supported by adequate consideration. *Mohar v. McLelland Lumber Co.*, 95 Idaho 38, 501 P.2d 722 (1972).

Intent to Defraud.

Although a conveyance is supported by fair and valuable consideration, it may be set aside with respect to creditors if it is the product of a fraudulent attempt by the debtor and transferee to obstruct access to the debtor's property for satisfaction of legitimate claims and is marked by an actual intent of

both the debtor and transferee to defraud the creditors. *Mohar v. McLelland Lumber Co.*, 95 Idaho 38, 501 P.2d 722 (1972).

RESEARCH REFERENCES

Am. Jur. — 37 Am. Jur. 2d, Fraudulent Conveyances, §§ 8 to 11.

C.J.S. — 37 C.J.S., Fraudulent Conveyances, § 74 et seq.

55-903. Power of revocation — When deemed executed. — Where a power to revoke or modify an instrument affecting the title to, or the enjoyment of, an estate in real property, is reserved to the grantor, or given to any other person, a subsequent grant of, or charge upon, the estate, by the person having the power of revocation, in favor of a purchaser or encumbrancer for value, operates as a revocation of the original instrument, to the extent of the power, in favor of such purchaser or encumbrancer.

History.

1863, p. 540, § 4; R.S., § 3017; reen. R.C. & C.L., § 3166; C.S., § 5430; I.C.A., § 54-903.

55-904. Power of revocation not subject to exercise before grant — When deemed executed. — Where a person having the power of revocation within the provisions of the last section is not entitled to execute it until after the time at which he makes such a grant or charge as is described in that section, the power is deemed to be executed as soon as he is entitled to execute it.

History.

1863, p. 540, § 5; R.S., § 3018; reen. R.C. & C.L., § 3167; C.S., § 5431; I.C.A., § 54-904.

55-905. Fraudulent transfers of personalty. — All deeds of gift, all conveyances, and all transfers or assignments, oral or written, of goods, chattels, or things in action, made in trust for the use of the person making the same, are void as against the creditors, existing or subsequent, of such person. However, a settlor's retained right to receive distributions from a trust in an amount equal to or less than the federal and state income tax liability incurred by such settlor as a result of such trust being characterized as a grantor trust pursuant to the rules of the Internal Revenue Code of 1986, as amended, sections 671 through 679, inclusive, shall not be considered a deed of gift, conveyance, transfer or assignment that is made in trust for the use of the person making the same.

History.

1863, p. 540, § 11; R.S., § 3019; reen. R.C.

& C.L., § 3168; C.S., § 5432; I.C.A., § 54-905; am. 2007, ch. 68, § 5, p. 174.

STATUTORY NOTES

Amendments.

The 2007 amendment, by ch. 68, substituted "oral" for "verbal" and added the last sentence.

Federal References.

Sections 671 through 679 of the Internal Revenue Code, are codified as 26 U.S.C.S. §§ 671 through 679.

JUDICIAL DECISIONS

ANALYSIS

Extent of application.
Valid transfers.
Void transfers.

Extent of Application.

This section relates to personal property only. *Capital Lumber Co. v. Saunders*, 26 Idaho 408, 143 P. 1178 (1914).

Valid Transfers.

Taking by mortgagee of property under mortgage executed more than four months prior to filing of petition in bankruptcy is not a transfer in fraud of creditors. *In re Simpson*, 31 F.2d 317 (D. Idaho), *aff'd*, 35 F.2d 840 (9th Cir. 1929).

Conveyance made by decedent to his daughter, without intent to defraud and not

in trust, does not come under provisions of this section. *Brown v. Perrault*, 5 Idaho 729, 51 P. 752 (1898).

Void Transfers.

Assignment in trust to secure certain creditor by permitting him to keep sufficient proceeds to pay his debts, accompanied by a contemporaneous parol agreement that any excess of such proceeds above the amount sufficient to pay creditor shall belong to grantor, is void as against creditors of grantor. *Johnson v. Sage*, 4 Idaho 758, 44 P. 641 (1896).

RESEARCH REFERENCES

Am. Jur. — 37 Am. Jur. 2d, *Fraudulent Conveyances*, §§ 25 to 30.

A.L.R. — *Conveyance as fraudulent where*

made in contemplation of possible liability for future tort. 38 A.L.R.3d 597.

55-906. Transfers in fraud of creditors. — Every transfer of property, or charge thereon made, every obligation incurred, and every judicial proceeding taken, with intent to delay or defraud any creditor or other person of his demands, is void against all creditors of the debtor and their successors in interest, and against any person upon whom the estate of the debtor devolves in trust for the benefit of others than the debtor.

History.

1863, p. 540, § 18; R.S., § 3020; *reen.* R.C.

& C.L., § 3169; C.S., § 5433; I.C.A., § 54-906.

JUDICIAL DECISIONS

ANALYSIS

Assignment to trustee.
Attorneys fees.
Close relationship with transferee.
Common-law rule.
Contingent liability.
Deeds of correction.
Estoppel.
Evidence and proof.
Future creditors.
Inference of actual fraud.
Necessity for existing creditors.
Non-creditors.
Parties.
Pleading and practice.
Purpose of section.
Statutory claims.
Valid transfers.
Voidable transfers.

- Contingent liability.
- Deficiency judgments.
- Intent to defraud.
- Reliance by creditor.
- Tax sales.

Assignment to Trustee.

Provision in assignment which exempts trustee from ordinary legal degree of liability renders assignment void. *Rogers v. Boise Ass'n. of Credit Men*, 33 Idaho 513, 196 P. 213 (1921).

Cases in which trustee may be authorized to carry on business are those in which such business is merely ancillary to winding up affairs and with view of more effectually promoting interest of creditors. *Rogers v. Boise Ass'n. of Credit Men*, 33 Idaho 513, 196 P. 213 (1921).

Where authority to continue business is given chiefly for benefit of debtor or is intended to hinder and delay creditors for unreasonable period, transfer is fraudulent and void. *Rogers v. Boise Ass'n. of Credit Men*, 33 Idaho 513, 196 P. 213 (1921).

Attorneys Fees.

Every party found to have committed fraud is not automatically required to pay the opposing party's attorney fees for having unsuccessfully defended against the claim of fraud. It is possible for defendants to raise a reasonable, yet unsuccessful, defense against a claim of fraud. *Haney v. Molko*, 123 Idaho 132, 844 P.2d 1382 (Ct. App. 1992).

Close Relationship with Transferee.

Transfers from father and mother to sons are subject to the court's scrutiny. *Buhl State Bank v. Glander*, 56 Idaho 543, 56 P.2d 757 (1936).

Transfers between members of a debtor's household are not prima facie fraudulent, but only slight additional evidence is required for a prima facie case. *Louk v. Patten*, 58 Idaho 334, 73 P.2d 949 (1937).

Although the existence of a close relationship between debtor and transferee invites close scrutiny, it is not a "badge of fraud" per se and must be supplemented by other proof of bad faith to establish a prima facie case of fraud. *Mohar v. McLelland Lumber Co.*, 95 Idaho 38, 501 P.2d 722 (1972).

Common-Law Rule.

This section substantially puts into effect the long established rule of the common law upon the same subject. *Capital Lumber Co. v. Saunders*, 26 Idaho 408, 143 P. 1178 (1914).

Contingent Liability.

A contingent liability is protected against fraudulent, voluntary conveyances, and whoever has a claim arising out of a preexisting contract, although it may be contingent, is a

"creditor" whose rights are affected by such conveyances, and, as such, can avoid them when the contingency happens upon which the claim depends. *Louk v. Patten*, 58 Idaho 334, 73 P.2d 949 (1937).

Deeds of Correction.

Deed given to correct former deed based on valuable consideration is not fraud on creditors who have come into existence since original conveyance, even though grantor is insolvent when second deed is given. *Feltham v. Blunck*, 34 Idaho 1, 198 P. 763 (1921).

Estoppel.

That a bankrupt national bank stockholder, who conveyed his property to his wife long prior to the closing of the bank, thereafter paid taxes, collected rents and directed operation of said property, does not estop the wife from resisting an attempt of the trustee in bankruptcy of the husband to set aside the conveyances as in fraud of creditors. *Kester v. Helmer*, 16 F. Supp. 260 (D. Idaho 1935), aff'd, 85 F.2d 646 (9th Cir.), cert. denied, 299 U.S. 608, 57 S. Ct. 234, 81 L. Ed. 448 (1936).

A wife who at all times knew that property, for purchase of which she had contributed separate funds stood in the name of her husband, but failed to object, although the husband borrowed money from the bank on security thereof, is estopped to assert claim of interest in property to defeat claim of bank, in an action to set aside fraudulent conveyances of said property. *Buhl State Bank v. Glander*, 56 Idaho 543, 56 P.2d 757 (1936).

Evidence and Proof.

Neither a gift from a man to his wife, nor a conveyance to another without consideration, is prima facie fraudulent. *Kester v. Helmer*, 16 F. Supp. 260 (D. Idaho 1935), aff'd, 85 F.2d 646 (9th Cir.), cert. denied, 299 U.S. 608, 57 S. Ct. 234, 81 L. Ed. 448 (1936).

Under this section great latitude of inquiry on the issue of fraud is permissible, and any facts which tend to prove an intent to delay or defraud any creditor are pertinent and proper. *Harkness v. Smith*, 3 Idaho 221, 28 P. 423 (1891).

Burden is on attacking party to show intent to defraud, and mere fact that preference results is not proof of fraud. *Rogers v. Boise Ass'n. of Credit Men*, 33 Idaho 513, 196 P. 213 (1921).

Court must determine bona fides of transfer from all facts and circumstances in evidence. *Snell v. Prescott*, 48 Idaho 783, 285 P. 483 (1930).

Proof that a husband and wife considered the wife's participation in, or contribution to, the purchase of land resulted in debt to be repaid by husband or wife from community is insufficient to sustain burden of proof that subsequent conveyance of property to the son was not fraudulent. *Buhl State Bank v. Glander*, 56 Idaho 543, 56 P.2d 757 (1936).

In an action to set aside fraudulent conveyances, evidence that execution on plaintiff's judgment was returned unsatisfied was admissible to show the financial condition of grantors at the time of the conveyance, in the absence of evidence of material change therein between the time of the conveyance and the time of the return of the execution, other than asserted fraudulent transfers and disposition of limited amount of personal property. *Buhl State Bank v. Glander*, 56 Idaho 543, 56 P.2d 757 (1936).

In an action to set aside fraudulent conveyances, evidence of conversation with grantor, subsequent to the conveyances, as to his purpose and intent in making transfers, was admissible to negative validity of transfers, where the evidence supported a finding that the grantees participated in fraud. *Buhl State Bank v. Glander*, 56 Idaho 543, 56 P.2d 757 (1936).

Conveyance from parent to child for a consideration which is grossly inadequate and attended by other circumstances indicative of fraud may be set aside. *Buhl State Bank v. Glander*, 56 Idaho 543, 56 P.2d 757 (1936).

Where the evidence showed that the owner of land, allegedly to secure payment of debts, conveyed it to a purported creditor, who immediately reconveyed it without consideration to a corporation of which the original grantor and his wife were the principal stockholders, that this purported creditor later mortgaged the land to the corporation and payments on the mortgage were transferred by the corporation to a bank in payment of personal debts of the original grantor, and the land was again conveyed by the purported creditor to the corporation in consideration of the satisfaction of said mortgage and a prior mortgage by the purported creditor to an insurance company, such transactions constituted "badges of fraud" from which the trial court could find that the final conveyance to the corporation was in fraud of the creditors of the original grantor. *Chester B. Brown Co. v. Goff*, 89 Idaho 170, 403 P.2d 855 (1965).

Future Creditors.

Where a bankrupt's possible future liability on his national bank stock constituted the sole basis of a claim that the bankrupt had existing creditors at the time of the alleged fraudulent conveyances, such conveyances could not be set aside as fraudulent, where there was no evidence that at the time of the

conveyances, the bank was insolvent, or that the bankrupt knew of such insolvency. *Kester v. Helmer*, 16 F. Supp. 260 (D. Idaho 1935), *aff'd*, 85 F.2d 646 (9th Cir.), *cert. denied*, 299 U.S. 608, 57 S. Ct. 234, 81 L. Ed. 448 (1936).

The possible future liability of a bankrupt national bank stockholder does not make either the bank or the bank's creditors creditors of the bankrupt at the time of the execution of the alleged fraudulent conveyances several years prior to the closing of the bank, so as to justify setting such conveyances aside, where the bankrupt had no other creditors at the time of the conveyance, since liability on the bank stock did not arise until the comptroller made an assessment. *Kester v. Helmer*, 16 F. Supp. 260 (D. Idaho 1935), *aff'd*, 85 F.2d 646 (9th Cir.), *cert. denied*, 299 U.S. 608, 57 S. Ct. 234, 81 L. Ed. 448 (1936).

Where actual fraud is established, a conveyance may be void as to subsequent creditors, as well as to prior creditors. *Louk v. Patten*, 58 Idaho 334, 73 P.2d 949 (1937).

The words "other person" embrace those who have become creditors after the conveyance and who have been defrauded thereby. *Louk v. Patten*, 58 Idaho 334, 73 P.2d 949 (1937).

Inference of Actual Fraud.

Although actual fraud must be proven by clear and convincing evidence, an inference of actual fraud may be warranted where certain badges of fraud attend the conveyance and are not adequately explained. *Mohar v. McLelland Lumber Co.*, 95 Idaho 38, 501 P.2d 722 (1972).

Inference of actual fraud in connection with transfer from father to daughter was not warranted by informality of the transaction, time gap between execution and recording of trust deed and financial difficulty of father where informality naturally resulted from close relationship, the deed was recorded promptly on delivery to daughter and the deed was supported by adequate consideration. *Mohar v. McLelland Lumber Co.*, 95 Idaho 38, 501 P.2d 722 (1972).

Necessity for Existing Creditors.

On the question of whether the conveyance of property was fraudulent or not, it must appear that there were existing creditors at the time of the alleged fraudulent transfer, and that the transfer was made with intent to delay or defraud such creditors. *Hendrickson v. Helmer*, 7 F. Supp. 627 (D. Idaho 1934).

Non-creditors.

Limited liability company and estate of one of its two manager/members had no cause of action against the other manager/member for transferring property to defraud creditors since neither plaintiff was a creditor of the limited liability company. *Estate of E. A. Col-*

lins v. Geist, 143 Idaho 821, 153 P.3d 1167 (2007).

Parties.

A judgment creditor, who has assigned a judgment to her counsel as security for attorneys' fees and money loaned to her by counsel with the understanding that, when the indebtedness was paid, the balance would go to the judgment creditor, could maintain an action to set aside fraudulent conveyances by the judgment debtor. *Louk v. Patten*, 58 Idaho 334, 73 P.2d 949 (1937).

Pleading and Practice.

A complaint seeking to set aside a deed executed by a bankrupt to his wife four years prior to the closing of a national bank, in which he was a stockholder, which alleged that the bankrupt was the owner of property in community and that he was in control and management of the property conveyed by deed, was not demurrable. *Hendrickson v. Helmer*, 7 F. Supp. 627 (D. Idaho 1934).

In a suit to cancel a deed, as being made in fraud of creditors, the complaint is not sufficient if it alleges fraud and notice, in respect to the transaction, only as conclusions of law. *Kerns v. Washington Water Power Co.*, 24 Idaho 525, 135 P. 70 (1913).

After decree of foreclosure of mortgage, personal judgment must be entered before action can be maintained to set aside conveyance as fraudulent. *Perkins v. Bundy*, 42 Idaho 560, 247 P. 751 (1926).

Creditor must reduce claim to judgment before he can maintain action to set aside conveyance as fraudulent. *Perkins v. Bundy*, 42 Idaho 560, 247 P. 751 (1926); *Petty v. Petty*, 66 Idaho 717, 168 P.2d 818 (1946).

Purpose of Section.

This section is intended to protect creditors against debtor conveying his property away to any person, including his wife. *Bank of Orofino v. Wellman*, 26 Idaho 425, 143 P. 1169 (1914).

Statutory Claims.

The claim of minor child against father for support before being reduced to judgment, being statutory, comes within the provisions of this section. *Petty v. Petty*, 66 Idaho 717, 168 P.2d 818 (1946).

Valid Transfers.

While assignment with preferences is illegal, the statutes of Idaho do not prohibit preferences between nonresident debtors and creditors through assignment which is valid by laws of debtor's domicile. *Barnett v. Kinney*, 147 U.S. 476, 13 S. Ct. 403, 37 L. Ed. 247 (1893).

Taking by mortgagee of property under mortgage executed more than four months prior to filing of petition in bankruptcy is not

a transfer in fraud of creditors. In *re Simpson*, 31 F.2d 317 (D. Idaho), *aff'd*, 35 F.2d 840 (9th Cir. 1929).

If transfer of property by a husband to his wife is made in good faith and not to defraud existing creditors, the consideration for love and affection and for the purpose of making her a gift is valid, and the validity thereof, as against creditors, does not depend upon subsequent events. *Hendrickson v. Helmer*, 7 F. Supp. 627 (D. Idaho 1934).

A trustee in bankruptcy is not entitled to have set aside alleged fraudulent conveyances by a bankrupt, where there was no evidence showing that the bankrupt did not have remaining sufficient property to meet his then obligations, and possible future assessments on national bank stock owned by him. *Kester v. Helmer*, 16 F. Supp. 260 (D. Idaho 1935), *aff'd*, 85 F.2d 646 (9th Cir.), *cert. denied*, 299 U.S. 608, 57 S. Ct. 234, 81 L. Ed. 448 (1936).

Preference is valid in absence of actual intent to defraud. *Rogers v. Boise Ass'n. of Credit Men*, 33 Idaho 513, 196 P. 213 (1921).

A gift deed, conveying realty to a daughter of grantor who had heart trouble and expected to die suddenly, as he later did, and who still had \$2,500 cash on deposit in bank and bonds worth \$10,000, was not invalid as intended to hinder, delay or defraud creditor. *Eley v. Lyon*, 60 Idaho 8, 88 P.2d 507 (1939).

Execution and delivery of trust deed by father, who was experiencing business difficulties, to daughter, creating first mortgage lien on father's property in favor of daughter, was not a fraudulent conveyance where the deed was given for adequate consideration, consisting of prior advances and expenditures by daughter, and where evidence presented by judgment creditor of father failed to establish actual fraud or "badges of fraud" from which an inference of actual fraud might be warranted. *Mohar v. McLelland Lumber Co.*, 95 Idaho 38, 501 P.2d 722 (1972).

Voidable Transfers.

—Contingent Liability.

A conveyance to grantor's daughter, executed subsequent to grantor's repudiation of a promise to marry, was subject to being set aside as a "fraudulent conveyance" by virtue of the contingent liability existing in favor of promisee at the time of conveyance. *Louk v. Patten*, 58 Idaho 334, 73 P.2d 949 (1937).

—Deficiency Judgments.

In an action by the holder of deficiency judgment to set aside conveyances from judgment debtors to sons, judgment setting aside conveyances should provide that conveyances were set aside only as to holder of deficiency judgment and subject only to satisfaction of deficiency judgment against judgment debt-

ors. *Buhl State Bank v. Glander*, 56 Idaho 543, 56 P.2d 757 (1936).

—Intent to Defraud.

Assignment of property made partly for the reason that assignor feels that his creditors may levy on the proceeds of the property is void as against creditors of assignor. *Johnson v. Sage*, 4 Idaho 758, 44 P. 641 (1896).

If a transfer is made with intent to evade payment of debts and such intent is known to transferee, such transfer is void. *Sears v. Lydon*, 5 Idaho 358, 49 P. 122 (1897).

If debtor transfers assets with the intent to defraud creditors, transfer is void as against judgment creditor, even though debtor is not insolvent. *Hilliard v. Sisil*, 192 F.2d 800 (9th Cir. 1951).

Although a conveyance is supported by fair and valuable consideration, it may be set aside with respect to creditors if it is the product of a fraudulent attempt by the debtor and transferee to obstruct access to the debtor's property for satisfaction of legitimate claims and is marked by an actual intent of both the debtor and transferee to defraud the creditors. *Blankenship v. Myers*, 97 Idaho 356, 544 P.2d 314 (1975).

—Reliance by Creditor.

Grantee, withholding her father's gift deed

from record until after a corporation extended credit to him in reliance on his financial statement listing realty conveyed as an asset, was not estopped to assert title thereto, as against such creditor, where grantor had much more than the amount of debt left in cash and bonds, and grantee did not know of such statement when deed was made. *Eley v. Lyon*, 60 Idaho 8, 88 P.2d 507 (1939).

—Tax Sales.

One who purchased property at an execution or tax sale received legal title and could bring an action to remove a cloud on the title created by a fraudulent transfer. Therefore, the district court had the equitable power to clear tax sale purchaser's title by setting aside the tax debtors' deeds to the family trust, which deeds were void and unenforceable against the tax sale purchaser. *Haney v. Molko*, 123 Idaho 132, 844 P.2d 1382 (Ct. App. 1992).

Cited in: *Boise Ass'n. of Credit Men v. Ellis*, 26 Idaho 438, 144 P. 6 (1914); *United States v. Bertie*, 529 F.2d 506 (9th Cir. 1976); *Spokane Merchants' Ass'n. v. Olmstead*, 80 Idaho 166, 327 P.2d 385 (1958); *Surety Life Ins. Co. v. Rose Chapel Mortuary, Inc.*, 95 Idaho 599, 514 P.2d 594 (1973).

RESEARCH REFERENCES

Am. Jur. — 37 Am. Jur. 2d, *Fraudulent Conveyances*, §§ 8 to 11.

C.J.S. — 37 C.J.S., *Fraudulent Conveyances*, §§ 74 to 93.

A.L.R. — Rule denying relief to one who

conveyed his property to defraud his creditors as applicable where the threatened claim which occasioned the conveyance was paid or was never established. 6 A.L.R.4th 862.

55-907. Transfers in fraud of creditors — Delivery and change of possession. — Every transfer of personal property other than a thing in action, and every lien thereon, other than [a] any transfer in connection with security interest created under the Uniform Commercial Code, is presumed, if made by a person having at the time the possession or control of the property, and not accompanied by an immediate delivery and followed by an actual and continued change of possession of the things transferred, to be fraudulent, and therefore void, against those who are his creditors while he remains in possession, and the successors in interests of such creditor, and against any persons on whom his estate devolves in trust for the benefit of others than himself, and against purchasers or encumbrancers in good faith subsequent to the transfer.

History.

1863, p. 540, § 15; R.S., § 3021; reen. R.C.

& C.L., § 3170; C.S., § 5434; I.C.A., § 54-907; am. 1967, ch. 272, § 27, p. 745.

STATUTORY NOTES

Cross References.

Secured transactions under Uniform Commercial Code, § 28-9-101 et seq.

Compiler's Notes.

The letter "a" was enclosed in brackets by the compiler to indicate surplusage from the 1967 amendment.

Section 33 of S.L. 1967, ch. 272, read: "Transactions validly entered into before the effective date specified in section 32 and the rights, duties and interest flowing from them

remain valid thereafter and may be terminated; completed, consummated or enforced as required or permitted by any statute amended by this act as though such amendment had not occurred."

Effective Dates.

Section 32 of S.L. 1967, ch. 272 provided that this act should become effective at midnight on December 31, 1967, simultaneously with the Uniform Commercial Code.

JUDICIAL DECISIONS

ANALYSIS

Possession retained.

Repossession.

Scope of inquiry.

Seizure under attachment.

Sufficiency of delivery.

Possession Retained.

This section was held not to apply to sale of timber which had been cut into logs by purchaser but left on land of seller. In re McCartney, 218 F. 717 (D. Idaho 1914).

Title to goods sold passes to buyer when bill of sale is made, regardless of the fact that the time of the delivery is postponed. Walker v. Lightfoot, 124 F.2d 3 (9th Cir. 1941).

A bill of sale by a mining company was not insufficient to vest title to personalty sold to the lessor, because no delivery of the personalty was made at the time of the execution of the bill of sale in the absence of fraud in the sale, and the personalty transferred was to be covered by the lease, and the lessor took possession of the personalty upon forfeiture under the lease about five years after the bill of sale was made and before the lessee became bankrupt. Walker v. Lightfoot, 124 F.2d 3 (9th Cir. 1941).

Where property is not at time of the sale in the possession or under the control of vendor, this section has no application. Cornwall v. Mix, 3 Idaho 687, 34 P. 893 (1893).

Where assignor retains the property under the same control and management, the assignment is void as against creditors. Johnson v. Sage, 4 Idaho 758, 44 P. 641 (1896).

L sold a quantity of wheat to H and M; before delivery or change of possession thereof, and twenty days after the sale, the wheat was levied upon under an execution issued in an action against L. It was held that the sale to H and M was void as to creditors. Hallett v. Parrish, 5 Idaho 496, 51 P. 109 (1897).

Where tenant holds personal property on the demised premises for his landlord and the

latter assigns the same to a third person, who leaves it on the demised premises for tenant to hold until a certain day, and property is seized upon an execution before that day, there is, at the time of the execution, no such delivery and change of possession as to vest title in the third person. Coombs v. Collins, 6 Idaho 536, 57 P. 310 (1899).

Where A purchases, at execution sale, stock belonging to B and leaves it in B's possession, paying him to care for it, this section does not apply, and B's judgment creditors obtain no right against A in respect to stock. Sweeten v. Ezell, 30 Idaho 154, 163 P. 612 (1917).

Alleged sale of personal property, not accompanied by an immediate delivery and not followed by an actual continued change of possession, is conclusively presumed to be fraudulent and void as against creditors of and purchasers from vendor. Ahlstrom v. Tage, 31 Idaho 459, 174 P. 605 (1918); Brown v. Herrick, 34 Idaho 171, 200 P. 117 (1921).

Alleged sale of automobile not accompanied by delivery and continued change of possession is fraudulent and void as against creditors of vendor. Sweetland v. Oakley State Bank, 40 Idaho 726, 236 P. 538 (1925).

Mortgagee of personal property under mortgage given to secure an antecedent debt has lien superior to purchaser of such property failing to remove it from owner's premises. Millick v. Stevens, 44 Idaho 347, 257 P. 30 (1927).

Unrecorded bill of sale of cattle, not accompanied by change of possession, is void as to creditors of grantor and is not admissible in evidence in action for damages for alleged conversion. Servel v. Corbett, 49 Idaho 536, 290 P. 200 (1930).

Repossession.

Where property, without legal excuse, is replaced in the same apparent relation to vendor after delivery, and there is no manifest and continued change of possession, the transfer is void. *Harkness v. Smith*, 3 Idaho 221, 28 P. 423 (1891).

Where there is an actual sale and delivery with change of possession, the subsequent act of prior owner in wrongfully taking possession of the property does not defeat purchaser's title as against subsequent purchaser. *Couch v. Montgomery*, 6 Idaho 669, 59 P. 16 (1899).

Scope of Inquiry.

Sole inquiry in this case is whether there has been an immediate delivery followed by actual and continued change of possession. No question of intent, bona fides or notice is relevant. *Harkness v. Smith*, 3 Idaho 221, 28 P. 423 (1891).

Seizure under Attachment.

Officer sued for wrongfully seizing property under an invalid writ of attachment may protect himself from being mulcted in exemplary damages by showing that the goods seized under the writ were recently in the possession of defendant, and that there was no such change of possession as is required by this section. *Sears v. Lydon*, 5 Idaho 358, 49 P. 122 (1897).

Sufficiency of Delivery.

Statute does not refer to the place where goods are situated, but to actual and continual change of possession, and does not require goods sold to be removed in all cases from the place where situated when sold. *Hazard v. Cole*, 1 Idaho 276 (1869).

Where property is at time of sale in the custody of a third person and sale is made in good faith, notice to the third person is sufficient to constitute a delivery. *Lufkins v. Collins*, 2 Idaho (Hasb.) 150, 7 P. 95 (1885).

Where horses pledged to secure a debt are at time of pledge in the possession of a third person who was to range the same for the winter, and pledgor tells such third person in the presence of all parties to hold them for pledgee, and such person takes the horses to the range and delivers them to pledgee in the spring, the latter paying for their care during the winter, there is a sufficient delivery and change of possession to satisfy the statute.

Murphy v. Braase, 3 Idaho 544, 32 P. 208 (1893).

No fixed rule can be established as a test for determining what the "immediate delivery" or "actual possession" required by the statute means, but the questions are matters of fact to be determined by the jury from the evidence in each particular case. *Simons v. Daly*, 9 Idaho 87, 72 P. 507 (1903); *Powelson v. Kinney*, 40 Idaho 565, 234 P. 935 (1925).

A worked on the ranch for B and had a room in B's house in town. B gave A a cream separator in settlement of a debt. A removed the separator from the ranch to his room in B's house. It was held that there was sufficient delivery and change of possession. *Rapple v. Hughes*, 10 Idaho 338, 77 P. 722 (1904).

Where retail dealer sells a wagon to purchaser and receives the purchase-price and thereupon writes a card containing the words "Sold to C. H. Trousdale," and places this notice on the wagon, and, thereupon, the wagon is left in the possession of retailer, and before it is taken away by purchaser a receiver takes charge of the property of retailer, there is sufficient change of possession to meet requirements of this section. *Trousdale v. Winona Wagon Co.*, 25 Idaho 130, 137 P. 372 (1913).

Instruction enlarging upon terms of statute by stating "that this change must be an open, visible change, manifested by such outward signs as render evidence to persons dealing with the property that the possession of the former owner as such has ceased" does not constitute prejudicial error. *Brown v. Feeler*, 35 Idaho 57, 204 P. 659 (1922).

When facts are undisputed it is for court to determine as matter of law whether there has been immediate delivery and continued change of possession. *Sweetland v. Oakley State Bank*, 40 Idaho 726, 236 P. 538 (1925).

In action of claim and delivery where evidence showed that, at time of transfer, certain cattle were on some lots owned by claimant, and that shortly after he arranged for their winter keep, there was such showing as to render statute inapplicable, and to leave question one of fact for jury. *Webster v. McCullough*, 45 Idaho 604, 264 P. 384 (1928).

Cited in: *In re Lane Lumber Co.*, 210 F. 82 (D. Idaho 1913); *Brown v. Perrault*, 5 Idaho 729, 51 P. 752 (1898); *Packard v. O'Neil*, 45 Idaho 427, 262 P. 881 (1927).

RESEARCH REFERENCES

Am. Jur. — 37 Am. Jur. 2d, Fraudulent Conveyances, §§ 36 to 38.

C.J.S. — 37 C.J.S., Fraudulent Conveyances, § 197 et seq.

55-908. Fraud is a question of fact. — In all cases arising under the

provisions of chapters 5 to 9 inclusive, of this title, the question of fraudulent intent is one of fact, and not of law; nor can any transfer or charge be adjudged fraudulent solely on the ground that it was not made for a valuable consideration.

History.

1863, p. 540, § 20; R.S., § 3022; reen. R.C.

& C.L., § 3171; C.S., § 5435; I.C.A., § 54-908; am. 1967, ch. 272, § 28, p. 745.

STATUTORY NOTES

Compiler's Notes.

Section 33 of S.L. 1967, ch. 272, read: "Transactions validly entered into before the effective date specified in section 32 and the rights, duties and interest flowing from them remain valid thereafter and may be terminated, completed, consummated or enforced as required or permitted by any statute amended by this act as though such amendment had not occurred."

Effective Dates.

Section 32 of S.L. 1967, ch. 272, provided that this act should become effective at midnight December 31, 1967, simultaneously with the Uniform Commercial Code, § 28-1-101 et seq.

JUDICIAL DECISIONS

ANALYSIS

Intent.

Presumptions and evidence.

Question of fact.

Release of mortgage.

Voluntary transfers.

Intent.

Intent with which a transfer in fraud of creditors is made is not established so much by attempting to ascertain the actual intent in mind of debtor, but rather by the facts and circumstances under which transfer was made and from which the law imputes a fraudulent motive. *California Consol. Mining Co. v. Manley*, 10 Idaho 786, 81 P. 50 (1905), appeal dismissed, 203 U.S. 579, 27 S. Ct. 779, 51 L. Ed. 326 (1906).

Whether a conveyance is for the purpose of defrauding creditors is a question of intent. *Lingenfelter v. Eby*, 68 Idaho 134, 190 P.2d 130 (1948).

A fraudulent intent may be imputed by the conditions and circumstances of the transfer. *Siegel Mobile Home Group, Inc. v. Bowen*, 114 Idaho 531, 757 P.2d 1250 (Ct. App. 1988).

The lack of an acknowledgment on the first deed to the wife, subsequent multiple conveyances of the property, and the coincidence of the timing of these transfers and the judgment of the pending case against the husband, did not create a showing from which conflicting inferences of the husband's intent could be drawn, where the affidavits given by the husband and wife, as well as the records in the divorce action, established the stated purpose of the deed as a settlement of the

property dispute arising from their earlier divorce. *Siegel Mobile Home Group, Inc. v. Bowen*, 114 Idaho 531, 757 P.2d 1250 (Ct. App. 1988).

Presumptions and Evidence.

Neither gift from husband to wife nor conveyance to another without consideration is prima facie fraudulent. *McMillan v. McMillan*, 42 Idaho 270, 245 P. 98 (1926).

In order to constitute fraudulent conveyance, there must be shown the fraud of vendor and injury to creditor. *McMillan v. McMillan*, 42 Idaho 270, 245 P. 98 (1926).

Transfer pending determination of contingent liability was held a fraud on creditors, as a matter of law. *Associated Fruit Co. v. Idaho-Oregon Fruit Growers' Ass'n*, 44 Idaho 200, 256 P. 99 (1927).

When insolvent debtor conveys all his property without consideration, inevitable result is to hinder and delay creditors. He is held to intend natural consequences of his act and natural inference is intent to defraud, in absence of circumstances that rebut that inference. *Snell v. Prescott*, 48 Idaho 783, 285 P. 483 (1930).

Question of Fact.

Determination of what constitutes immediate change of possession and delivery is

purely a question of fact to be determined by the jury, or the court in case a jury is waived, from all the evidence in the particular case. *Rapple v. Hughes*, 10 Idaho 338, 77 P. 722 (1904).

Absence of valuable consideration does not necessarily render deed invalid. *Feltham v. Blunck*, 34 Idaho 1, 198 P. 763 (1921); *Snell v. Prescott*, 48 Idaho 783, 285 P. 483 (1930).

It is duty of trial court to determine bona fides of transaction from all facts and circumstances in evidence. *Snell v. Prescott*, 48 Idaho 783, 285 P. 483 (1930).

Release of Mortgage.

Refusal of mortgagee to release six chattel mortgages could not be excused on the ground that there was no consideration for one of the mortgages, since a mortgage is not fraudulent merely because there is lack of consideration, and, furthermore, question of fraud can only be raised by the creditors in a proper proceed-

ing. *Head v. Crone*, 76 Idaho 196, 279 P.2d 1064 (1955).

Voluntary Transfers.

Conveyance made for a mere nominal consideration, when attacked as fraudulent, will be subjected to the rules applicable to voluntary transfers. *Feltham v. Blunck*, 34 Idaho 1, 198 P. 763 (1921).

Transfer of property from husband to wife is not fraudulent, if husband had sufficient remaining property to pay his debts. *McMillan v. McMillan*, 42 Idaho 270, 245 P. 98 (1926); *Snell v. Prescott*, 48 Idaho 783, 285 P. 483 (1930).

Cited in: *Brown v. Perrault*, 5 Idaho 729, 51 P. 752 (1898); *Capital Lumber Co. v. Saunders*, 26 Idaho 408, 143 P. 1178 (1914); *United States v. Bertie*, 529 F.2d 506 (9th Cir. 1976); *Mohar v. McLelland Lumber Co.*, 95 Idaho 38, 501 P.2d 722 (1972); *Surety Life Ins. Co. v. Rose Chapel Mortuary, Inc.*, 95 Idaho 599, 514 P.2d 594 (1973).

55-909. Title of purchaser not impaired. — The provisions of this chapter do not in any manner affect or impair the title of a purchaser for a valuable consideration, unless it appears that such purchaser had previous notice of the fraudulent intent of his immediate grantor, or of the fraud rendering void the title of such grantor.

History.

1863, p. 540, § 21; R.S., § 3023; reen. R.C.

& C.L., § 3172; C.S., § 5436; I.C.A., § 54-909.

JUDICIAL DECISIONS

ANALYSIS

Bona fide transfers.

Construction with other law.

Fraudulent transfers.

Good faith purchaser.

Bona Fide Transfers.

Transfer of stock by a married woman, although procured by duress and coercion on the part of her husband, was good where transferee was bona fide holder for value, without notice or knowledge of such duress or coercion. *Bryan v. Montandon*, 6 Idaho 352, 55 P. 650 (1898).

Transfer of property for purpose of defrauding creditors is good as between the parties. *Berryman v. Dore*, 47 Idaho 582, 277 P. 565 (1929).

Construction with Other Law.

Limited liability company and estate of one of its two manager/members had no cause of action against the other manager/member for transferring property to defraud creditors since neither plaintiff was a creditor of the limited liability company. *Estate of E. A. Col-*

lins v. Geist, 143 Idaho 821, 153 P.3d 1167 (2007).

Fraudulent Transfers.

Where a debtor conveyed land to a minor daughter after a suit against the debtor had been instituted, it made out a prima facie case of fraudulent transfer under this section, and the grantee's daughter's successor had burden of showing good faith and that consideration had been paid. *Kantola v. Hendrickson*, 52 Idaho 217, 12 P.2d 866 (1932).

Good Faith Purchaser.

Regardless of any rights existing under the UCC in farmers who sold grain to buyer who failed to pay, an action for conversion could not be sustained against subsequent good faith purchaser for value. *Western Idaho Prod. Credit Ass'n v. Simplot Feed Lots, Inc.*, 106 Idaho 264, 678 P.2d 52 (1984).

Cited in: Mohar v. McLelland Lumber Co., Perkins, 107 Idaho 901, 693 P.2d 1103 (Ct. 95 Idaho 38, 501 P.2d 722 (1972); Lind v. App. 1984).

RESEARCH REFERENCES

Am. Jur. — 37 Am. Jur. 2d, Fraudulent Conveyances, §§ 8 to 10, 25 to 30. **C.J.S.** — 37 C.J.S., Fraudulent Conveyances, §§ 81 to 87.

55-910. Uniform fraudulent transfer act — Definitions. — As used in this act:

(1) “Affiliate” means:

(a) A person who directly or indirectly owns, controls, or holds with power to vote, twenty percent (20%) or more of the outstanding voting securities of the debtor, other than a person who holds the securities:

1. as a fiduciary or agent without sole discretionary power to vote the securities; or
2. solely to secure a debt, if the person has not exercised the power to vote;

(b) A corporation twenty percent (20%) or more of whose outstanding voting securities are directly or indirectly owned, controlled, or held with power to vote, by the debtor or a person who directly or indirectly owns, controls, or holds with power to vote, twenty percent (20%) or more of the outstanding voting securities of the debtor, other than a person who holds the securities:

1. as a fiduciary or agent without sole power to vote the securities; or
2. solely to secure a debt, if the person has not in fact exercised the power to vote;

(c) A person whose business is operated by the debtor under a lease or other agreement, or a person substantially all of whose assets are controlled by the debtor; or

(d) A person who operates the debtor’s business under a lease or other agreement or controls substantially all of the debtor’s assets.

(2) “Asset” means property of a debtor, but the term does not include:

- (a) Property to the extent it is encumbered by a valid lien;
- (b) Property to the extent it is generally exempt under nonbankruptcy law.

(3) “Claim” means a right to payment, whether or not the right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, or unsecured.

(4) “Creditor” means a person who has a claim.

(5) “Debt” means liability on a claim.

(6) “Debtor” means a person who is liable on a claim.

(7) “Insider” includes:

(a) If the debtor is an individual:

1. a relative of the debtor or of a general partner of the debtor;
2. a partnership in which the debtor is a general partner;
3. a general partner in a partnership described in subsection (7)(a)2. of this section; or
4. a corporation of which the debtor is a director, officer, or person in control;

(b) If the debtor is a corporation:

1. a director of the debtor;
2. an officer of the debtor;
3. a person in control of the debtor;
4. a partnership in which the debtor is a general partner;
5. a general partner in a partnership described in subsection (7)(b)4. of this section; or
6. a relative of a general partner, director, officer, or person in control of the debtor;

(c) If the debtor is a partnership:

1. a general partner in the debtor;
2. a relative of a general partner in, or a general partner of, or a person in control of the debtor;
3. another partnership in which the debtor is a general partner;
4. a general partner in a partnership described in subsection (7)(c)3., of this section; or
5. a person in control of the debtor;

(d) An affiliate, or an insider of an affiliate as if the affiliate were the debtor; and

(e) A managing agent of the debtor.

(8) "Lien" means a charge against or an interest in property to secure payment of a debt or performance of an obligation, and includes a security interest created by agreement, a judicial lien obtained by legal or equitable process or proceedings, a common-law lien, or a statutory lien.

(9) "Person" means an individual, partnership, corporation, association, organization, government or governmental subdivision or agency, business trust, estate, trust, or any other legal or commercial entity.

(10) "Property" means anything that may be the subject of ownership.

(11) "Relative" means an individual related by consanguinity within the third degree as determined by the common law, a spouse, or an individual related to a spouse within the third degree as so determined, and includes an individual in an adoptive relationship within the third degree.

(12) "Transfer" means every mode, direct or indirect, absolute or conditional, voluntary or involuntary, of disposing of or parting with an asset or an interest in an asset, and includes payment of money, release, lease, and creation of a lien or other encumbrance.

(13) "Valid lien" means a lien that is effective against the holder of a judicial lien subsequently obtained by legal or equitable process or proceedings.

History.

I.C., § 55-910, as added by 1987, ch. 202,
§ 2, p. 422.

STATUTORY NOTES

Prior Laws.

Former §§ 55-910 to 55-921 which comprised 1969, ch. 463, §§ 1 to 12, p. 1300, were repealed by S.L. 1987, ch. 202, § 1.

Compiler's Notes.

The term "this act" in the introductory paragraph refers to S.L. 1987, ch. 202, which is compiled as §§ 55-910 to 55-921.

JUDICIAL DECISIONS

Cited in: Dunham v. Dunham, 128 Idaho 55, 910 P.2d 169 (Ct. App. 1994); Post v. Idaho Farmway, Inc., 135 Idaho 475, 20 P.3d 11 (2001).

55-911. Insolvency defined. — (1) A debtor is insolvent if the sum of the debtor's debts is greater than all of the debtor's assets, at a fair valuation.

(2) A debtor who is generally not paying his or her debts as they become due is presumed to be insolvent.

(3) A partnership is insolvent under subsection (1) of this section if the sum of the partnership's debts is greater than the aggregate of all of the partnership's assets, at a fair valuation, and the sum of the excess of the value of each general partner's nonpartnership assets over the partner's nonpartnership debts.

(4) Assets under this section do not include property that has been transferred, concealed, or removed with intent to hinder, delay, or defraud creditors or that has been transferred in a manner making the transfer voidable under this act.

(5) Debts under this section do not include an obligation to the extent it is secured by a valid lien on property of the debtor not included as an asset.

History.

I.C., § 55-911, as added by 1987, ch. 202, § 2, p. 422.

STATUTORY NOTES

Compiler's Notes.

The term "this act" in subsection (4) refers to S.L. 1987, ch. 202, which is compiled as §§ 55-910 to 55-921.

JUDICIAL DECISIONS

Cited in: Post v. Idaho Farmway, Inc., 135 Idaho 475, 20 P.3d 11 (2001).

55-912. Value defined. — (1) Value is given for a transfer or an obligation if, in exchange for the transfer or obligation, property is transferred or an antecedent debt is secured or satisfied, but value does not include an unperformed promise made otherwise than in the ordinary course of the promisor's business to furnish support to the debtor or another person.

(2) For the purposes of sections 55-913(1)(b) and 55-914, Idaho Code, a person gives a reasonably equivalent value if the person acquires an interest of the debtor in an asset pursuant to a regularly conducted, noncollusive foreclosure sale or execution of a power of sale for the acquisition or disposition of the interest of the debtor upon default under a mortgage, deed of trust, or security agreement.

(3) A transfer is made for present value if the exchange between the debtor and the transferee is intended by them to be contemporaneous and is in fact substantially contemporaneous.

History.

I.C., § 55-912, as added by 1987, ch. 202,
§ 2, p. 422.

STATUTORY NOTES**Prior Laws.**

Former § 55-912 was repealed. See Prior
Laws, § 55-910.

JUDICIAL DECISIONS**Antecedent Debt.**

A transfer that satisfies an antecedent debt
is value as defined by this section, but the
debt must actually be satisfied and the value

must be reasonably equivalent. *Post v. Idaho
Farmway, Inc.*, 135 Idaho 475, 20 P.3d 11
(2001).

55-913. Transfers fraudulent as to present and future creditors.

— (1) A transfer made or obligation incurred by a debtor is fraudulent as to a creditor, whether the creditor's claim arose before or after the transfer was made or the obligation was incurred, if the debtor made the transfer or incurred the obligation:

(a) With actual intent to hinder, delay, or defraud any creditor of the debtor; or

(b) Without receiving a reasonably equivalent value in exchange for the transfer or obligation, and the debtor:

1. was engaged or was about to engage in a business or a transaction for which the remaining assets of the debtor were unreasonably small in relation to the business or transaction; or

2. intended to incur, or believed or reasonably should have believed that he or she would incur, debts beyond his or her ability to pay as they became due.

(2) In determining actual intent under subsection (1)(a) of this section, consideration may be given, among other factors, as to whether:

(a) The transfer or obligation was to an insider;

(b) The debtor retained possession or control of the property transferred after the transfer;

(c) The transfer or obligation was disclosed or concealed;

(d) Before the transfer was made or obligation was incurred, the debtor had been sued or threatened with suit;

(e) The transfer was of substantially all the debtor's assets;

(f) The debtor absconded [absconded];

(g) The debtor removed or concealed assets;

(h) The value of the consideration received by the debtor was reasonably equivalent to the value of the asset transferred or the amount of the obligation incurred;

(i) The debtor was insolvent or became insolvent shortly after the transfer was made or the obligation was incurred;

(j) The transfer occurred shortly before or shortly after a substantial debt was incurred; and

(k) The debtor transferred the essential assets of the business to a lienor who transferred the assets to an insider of the debtor.

History.

I.C., § 55-913, as added by 1987, ch. 202, § 2, p. 422.

STATUTORY NOTES**Prior Laws.**

Former § 55-913 was repealed. See Prior Laws, § 55-910.

was added by the compiler to correct spelling of the term.

Compiler's Notes.

The bracketed insertion in paragraph (2)(f)

JUDICIAL DECISIONS**ANALYSIS**

Applicability.

Compelling government interest.

Intent.

Non-creditors.

Pre-emption.

Applicability.

This section and §§ 55-914 and 55-918 apply under much the same circumstances as does 11 U.S.C.S. § 548(a)(2), except that they permit creditors to avoid transfers made as much as four years before the filing of a bankruptcy petition. In re Hodge, 220 Bankr. 386 (Bankr. D. Idaho 1998).

Because a debtor and his wife purchased a vehicle during their marriage, it was presumed to be community property under § 32-906, and they did not rebut this presumption by testifying that the vehicle was purchased with funds from the wife's separate bank account. A Chapter 7 trustee could avoid a transfer of the vehicle from debtor to his wife, as constructively fraudulent under 11 U.S.C.S. § 548(a)(1)(B), § 55-914(1), and paragraph (1)(b) of this section, as the transfer occurred within the applicable reach back period, the debtor was insolvent at the time, and he transferred the vehicle for less than reasonably equivalent value. Rainsdon v. Kirtland (In re Kirtland), 2011 Bankr. LEXIS 3828 (Bankr. D. Idaho Sept. 30, 2011).

Where a debtor and his wife purchased a motorcycle prior to their marriage, it was not community property under § 32-906; so when the debtor transferred his interest in the motorcycle to his wife after their marriage, it was her separate property from that time forward under § 32-903. Because the motorcycle became her separate property at that time, the debtor did not transfer an interest in the motorcycle to his wife within the applicable reach back period in 11 U.S.C.S. § 548(a) or in the four-year period provided in § 55-918, as applicable to the fraudulent transfer provisions in paragraphs (1)(a) and (1)(b) of this section and § 55-914(a). Rainsdon v.

Kirtland (In re Kirtland), 2011 Bankr. LEXIS 3828 (Bankr. D. Idaho Sept. 30, 2011).

Compelling Government Interest.

The application of avoidance statutes to debtors' church tithing payments "substantially burdened" the free exercise of their religious beliefs and, although the avoidance statutes may be justified by a "compelling governmental interest," they were not the "least restrictive means" of furthering that interest; the Religious Freedom Restoration Act (42 USCS § 2000bb et seq.) provided a defense to Chapter 7 trustee's action to recover tithing payments as "fraudulent transfers." In re Hodge, 220 Bankr. 386 (Bankr. D. Idaho 1998).

Intent.

Subdivision (2)(h) of this section contains but one of several factors which can be considered in determining whether a transfer was made or obligation was incurred with actual intent on the part of the debtor to hinder, delay, or defraud any creditor; such intent is a prerequisite for liability under this section. Alcan Bldg. Prods. v. Peoples, 124 Idaho 338, 859 P.2d 374 (Ct. App. 1993).

Chapter 7 trustee failed to meet his burden of proving that transfers by a debtor to his wife within the two years prior to filing his petition were made with actual intent to hinder, delay, or defraud his creditors. Thus, the transfers were not avoidable under 11 U.S.C.S. §§ 548(a)(1)(A) and § 55-913(1)(a), even though several badges of fraud were present, including the fact that they were married at the time of the transfers, he admitted that he was insolvent at the time each transfer was made, and he did not list any of the transfers on his statement of financial

affairs. On balance, while there were some traditional badges of fraud present, the court found that the debtor transferred his interests in the property to his wife in preparation for the parties' divorce. *Rainsdon v. Kirtland* (In re Kirtland), 2011 Bankr. LEXIS 3828 (Bankr. D. Idaho Sept. 30, 2011).

Non-creditors.

Limited liability company and estate of one of its two manager/members had no cause of action against the other manager/member for transferring property to defraud creditors since neither plaintiff was a creditor of the limited liability company. *Estate of E. A. Col-*

lins v. Geist, 143 Idaho 821, 153 P.3d 1167 (2007).

Pre-emption.

Claim brought under this section or § 55-914(1), concerning an alleged fraudulent transfer, was not preempted by federal bankruptcy law when bankruptcy trustee was time-barred from bringing the claim. *Christian v. Mason*, 148 Idaho 149, 219 P.3d 473 (2009).

Cited in: *Dunham v. Dunham*, 128 Idaho 55, 910 P.2d 169 (Ct. App. 1994); *Klein v. Capital One Fin. Corp.*, 2011 U.S. Dist. LEXIS 83905 (D. Idaho July 29, 2011).

55-914. Transfers fraudulent as to present creditors. — (1) A transfer made or obligation incurred by a debtor is fraudulent as to a creditor whose claim arose before the transfer was made or the obligation was incurred if the debtor made the transfer or incurred the obligation without receiving a reasonably equivalent value in exchange for the transfer or obligation and the debtor was insolvent at that time or the debtor became insolvent as a result of the transfer or obligation.

(2) A transfer made by a debtor is fraudulent as to a creditor whose claim arose before the transfer was made if the transfer was made to an insider for an antecedent debt, the debtor was insolvent at that time, and the insider had reasonable cause to believe that the debtor was insolvent.

History.

I.C., § 55-914, as added by 1987, ch. 202, § 2, p. 422.

STATUTORY NOTES

Prior Laws.

Former § 55-914 was repealed. See Prior Laws, § 55-910.

JUDICIAL DECISIONS

ANALYSIS

Applicability.

Compelling government interest.

Elements.

Pre-emption.

Applicability.

This section applies when an insolvent debtor transfers assets to an insider for an antecedent debt and the insider had reasonable cause to believe the debtor was insolvent. *Alcan Bldg. Prods. v. Peoples*, 124 Idaho 338, 859 P.2d 374 (Ct. App. 1993).

This section and §§ 55-913 and 55-918 apply under much the same circumstances as does 11 U.S.C.S. § 548(a)(2), except that they permit creditors to avoid transfers made as much as four years before the filing of a

bankruptcy petition. In re *Hodge*, 220 Bankr. 386 (Bankr. D. Idaho 1998).

Summary judgment was proper where there was no genuine issue of fact concerning the presumption of insolvency and the district judge properly determined that each element of a fraudulent transfer under paragraph (1) was met. *Post v. Idaho Farmway, Inc.*, 135 Idaho 475, 20 P.3d 11 (2001).

Because a debtor and his wife purchased a vehicle during their marriage, it was presumed to be community property under § 32-

906, and they did not rebut this presumption by testifying that the vehicle was purchased with funds from the wife's separate bank account. A Chapter 7 trustee could avoid a transfer of the vehicle from debtor to his wife, as constructively fraudulent under 11 U.S.C.S. § 548(a)(1)(B), § 55-913(1)(b), and subsection (1) of this section, as the transfer occurred within the applicable reach back period, the debtor was insolvent at the time, and he transferred the vehicle for less than reasonably equivalent value. *Rainsdon v. Kirtland* (In re Kirtland), 2011 Bankr. LEXIS 3828 (Bankr. D. Idaho Sept. 30, 2011).

Where a debtor and his wife purchased a motorcycle prior to their marriage, it was not community property under § 32-906; so when the debtor transferred his interest in the motorcycle to his wife after their marriage, it was her separate property from that time forward under § 32-903. Because the motorcycle became her separate property at that time, the debtor did not transfer an interest in the motorcycle to his wife within the applicable reach back period in 11 U.S.C.S. § 548(a) or in the four-year period provided in § 55-913, as applicable to the fraudulent transfer provisions in § 55-913(1)(a) and (1)(b) and subsection (a) of this section. *Rainsdon v. Kirtland* (In re Kirtland), 2011 Bankr. LEXIS 3828 (Bankr. D. Idaho Sept. 30, 2011).

Compelling Government Interest.

The application of avoidance statutes to debtors' church tithing payments "substantially burdened" the free exercise of their religious beliefs and, although the avoidance statutes may be justified by a "compelling

governmental interest," they were not the "least restrictive means" of furthering that interest; the Religious Freedom Restoration Act (42 USCS § 2000bb et seq.) provided a defense to Chapter 7 trustee's action to recover tithing payments as "fraudulent transfers." In re Hodge, 220 Bankr. 386 (Bankr. D. Idaho 1998).

Elements.

The inquiry whether a transfer of assets is fraudulent under subsection (2) of this section is satisfied by affirmative answers to the following elements: (1) Did the creditor's claim arise before the transfer was made? (2) Was the transfer made to an insider? (3) Was the transfer made for an antecedent debt? and (4) Was the debtor insolvent at the time the transfer was made and did the insider have reasonable cause to believe that the debtor was insolvent? *Alcan Bldg. Prods. v. Peoples*, 124 Idaho 338, 859 P.2d 374 (Ct. App. 1993).

Pre-emption.

Claim brought under this section or § 55-913, concerning an alleged fraudulent transfer, was not preempted by federal bankruptcy law when bankruptcy trustee was time-barred from bringing the claim. *Christian v. Mason*, 148 Idaho 149, 219 P.3d 473 (2009).

Cited in: *Dunham v. Dunham*, 128 Idaho 55, 910 P.2d 169 (Ct. App. 1994); *High Valley Concrete, L.L.C. v. Sargent*, 149 Idaho 423, 234 P.3d 747 (2010); *Klein v. Capital One Fin. Corp.*, 2011 U.S. Dist. LEXIS 83905 (D. Idaho July 29, 2011).

55-915. When transfer is made or obligation is incurred. — For the purposes of this act:

(1) A transfer is made:

(a) With respect to an asset that is real property other than a fixture, but including the interest of a seller or purchaser under a contract for the sale of the asset, when the transfer is so far perfected that a good-faith purchaser of the asset from the debtor against whom applicable law permits the transfer to be perfected cannot acquire an interest in the asset that is superior to the interest of the transferee; and

(b) With respect to an asset that is not real property or that is a fixture, when the transfer is so far perfected that a creditor on a simple contract cannot acquire a judicial lien otherwise than under this act that is superior to the interest of the transferee;

(2) If applicable law permits the transfer to be perfected as provided in subsection (1) of this section and the transfer is not so perfected before the commencement of an action for relief under this act, the transfer is deemed made immediately before the commencement of the action;

(3) If applicable law does not permit the transfer to be perfected as

provided in subsection (1) of this section, the transfer is made when it becomes effective between the debtor and the transferee;

(4) A transfer is not made until the debtor has acquired rights in the asset transferred;

(5) An obligation is incurred:

(a) If oral, when it becomes effective between the parties; or

(b) If evidenced by a writing, when the writing executed by the obligor is delivered to or for the benefit of the obligee.

History.

I.C., § 55-915, as added by 1987, ch. 202,
§ 2, p. 422.

STATUTORY NOTES

Prior Laws.

Former § 55-915 was repealed. See Prior
Laws, § 55-910.

202, which is compiled as §§ 55-910 to 55-
921.

Compiler's Notes.

The term "this act" refers to S.L. 1987, ch.

JUDICIAL DECISIONS

Cited in: Dunham v. Dunham, 128 Idaho
55, 910 P.2d 169 (Ct. App. 1994).

55-916. Remedies of creditors. — (1) In an action for relief against a transfer or obligation under this act, a creditor, subject to the limitations in section 55-917, Idaho Code, may obtain:

(a) Avoidance of the transfer or obligation to the extent necessary to satisfy the creditor's claim;

(b) An attachment or other provisional remedy against the asset transferred or other property of the transferee in accordance with the procedure prescribed in chapter 5, title 8, Idaho Code;

(c) Subject to applicable principles of equity and in accordance with applicable rules of civil procedure;

1. an injunction against further disposition by the debtor or a transferee, or both, of the asset transferred or of other property;

2. appointment of a receiver to take charge of the asset transferred or of other property of the transferee; or

3. any other relief the circumstances may require.

(2) If a creditor has obtained a judgment on a claim against the debtor, the creditor, if the court so orders, may levy execution on the asset transferred or its proceeds.

History.

I.C., § 55-916, as added by 1987, ch. 202,
§ 2, p. 422.

STATUTORY NOTES

Prior Laws.

Former § 55-916 was repealed. See Prior Laws, § 55-910.

202, which is compiled as §§ 55-910 to 55-921.

Compiler's Notes.

The term "this act" refers to S.L. 1987, ch.

JUDICIAL DECISIONS

ANALYSIS

Alternative right to payment.
Equitable remedies.

Alternative Right to Payment.

In the face of a fraudulent conveyance, a creditor can either recover the actual property transferred, or a money judgment against the transferee for the property's equivalent value. This is clearly an alternative right to payment beyond the equitable remedy of avoidance of the transfer and recovery of the asset. As such, prospective purchaser is considered to have a claim for purposes of Section 101(5)(B) of the Bankruptcy Code (11 USCS § 101(5)(B)) and cannot void the transfer as against the bankruptcy estate and the trustee. *TKO Properties v. Young*, 214 Bankr. 905 (Bankr. D. Idaho 1997).

aside the tax debtors' deeds to the family trust, which deeds were void and unenforceable against the tax sale purchaser. *Haney v. Molko*, 123 Idaho 132, 844 P.2d 1382 (Ct. App. 1992).

Once it has been established that a fraudulent transfer has occurred, subsection (2) of this section allows a creditor who already has a judgment against the debtor to levy execution on the asset transferred, if the court so orders. In addition, where the transfer in question is found to be fraudulent and thus voidable, the creditor may recover judgment against the transferee for the value of the asset transferred, subject to equitable adjustment under subsection (3) of § 55-917, or for the amount necessary to satisfy the creditor's claim, whichever is less. *Alcan Bldg. Prods. v. Peoples*, 124 Idaho 338, 859 P.2d 374 (Ct. App. 1993).

Equitable Remedies.

One who purchased property at an execution or tax sale received legal title and could bring an action to remove a cloud on the title created by a fraudulent transfer. Therefore, the district court had the equitable power to clear tax sale purchaser's title by setting

Cited in: *KEB Enters., L.P. v. Smedley*, 140 Idaho 746, 101 P.3d 690 (2004).

55-917. Defenses, liability, and protection of transferee. — (1) A transfer or obligation is not voidable under section 55-913(1)(a), Idaho Code, against a person who took in good faith and for a reasonably equivalent value or against any subsequent transferee or obligee.

(2) Except as otherwise provided in this section, to the extent a transfer is voidable in an action by a creditor under section 55-916(1)(a), Idaho Code, the creditor may recover judgment for the value of the asset transferred, as adjusted under subsection (3) of this section, or the amount necessary to satisfy the creditor's claim, whichever is less. The judgment may be entered against:

(a) The first transferee of the asset or the person for whose benefit the transfer was made; or

(b) Any subsequent transferee other than a good-faith transferee or obligee who took for value or from any subsequent transferee or obligee.

(3) If the judgment under subsection (2) of this section is based upon the value of the asset transferred, the judgment must be for an amount equal to the value of the asset at the time of the transfer, subject to adjustment as the equities may require.

(4) Notwithstanding voidability of a transfer or an obligation under this act, a good-faith transferee or obligee is entitled, to the extent of the value given the debtor for the transfer or obligation, to:

- (a) A lien on or a right to retain any interest in the asset transferred;
- (b) Enforcement of any obligation incurred; or
- (c) A reduction in the amount of the liability on the judgment.

(5) A transfer is not voidable under sections 55-913(1)(b) or 55-914, Idaho Code, if the transfer results from:

- (a) Termination of a lease upon default by the debtor when the termination is pursuant to the lease and applicable law; or
- (b) Enforcement of a security interest in compliance with chapter 9, title 28, Idaho Code.
- (6) A transfer is not voidable under section 55-914(2), Idaho Code:
 - (a) To the extent the insider gave new value to or for the benefit of the debtor after the transfer was made unless the new value was secured by a valid lien;
 - (b) If made in the ordinary course of business or financial affairs of the debtor and the insider; or
 - (c) If made pursuant to a good-faith effort to rehabilitate the debtor and the transfer secured present value given for that purpose as well as an antecedent debt of the debtor.

History.

I.C., § 55-917, as added by 1987, ch. 202, § 2, p. 422.

STATUTORY NOTES

Prior Laws.

Former § 55-917 was repealed. See Prior Laws, § 55-910.

202, which is compiled as §§ 55-910 to 55-921.

Compiler's Notes.

The term "this act" refers to S.L. 1987, ch.

JUDICIAL DECISIONS

ANALYSIS

Alternative right to payment.
Equitable remedies.
Non-creditors.

Alternative Right to Payment.

In the face of a fraudulent conveyance, a creditor can either recover the actual property transferred, or a money judgment against the transferee for the property's equivalent value. This is clearly an alternative right to payment beyond the equitable remedy of avoidance of the transfer and recovery of the asset. As such, prospective purchaser is considered to have a claim for purposes of Section 101(5)(B), 11 U.S.C.S. § 101(5)(B), of the Bankruptcy Code (11 USCS § 101(5)(B)) and cannot void the transfer as against the bankruptcy estate

and the trustee. *TKO Properties v. Young*, 214 Bankr. 905 (Bankr. D. Idaho 1997).

Equitable Remedies.

One who purchased property at an execution or tax sale received legal title and could bring an action to remove a cloud on the title created by a fraudulent transfer. Therefore, the district court had the equitable power to clear tax sale purchaser's title by setting aside the tax debtors' deeds to the family trust, which deeds were void and unenforceable against the tax sale purchaser. *Haney v.*

Molko, 123 Idaho 132, 844 P.2d 1382 (Ct. App. 1992).

Once it has been established that a fraudulent transfer has occurred, subsection (2) of this section allows a creditor who already has a judgment against the debtor to levy execution on the asset transferred, if the court so orders. In addition, where the transfer in question is found to be fraudulent and, thus, voidable, the creditor may recover judgment against the transferee for the value of the asset transferred, subject to equitable adjustment under subsection (3) of this section, or for the amount necessary to satisfy the cred-

itor's claim, whichever is less. *Alcan Bldg. Prods. v. Peoples*, 124 Idaho 338, 859 P.2d 374 (Ct. App. 1993).

Non-creditors.

Limited liability company and estate of one of its two manager/members had no cause of action against the other manager/member for transferring property to defraud creditors since neither plaintiff was a creditor of the limited liability company. *Estate of E. A. Collins v. Geist*, 143 Idaho 821, 153 P.3d 1167 (2007).

55-918. Extinguishment of a cause of action. — A cause of action with respect to a fraudulent transfer or obligation under this act is extinguished unless action is brought:

(1) Under section 55-913(1)(a), Idaho Code, within four (4) years after the transfer was made or the obligation was incurred or, if later, within one (1) year after the transfer or obligation was or could reasonably have been discovered by the claimant;

(2) Under section 55-913(1)(b) or 55-914(1), Idaho Code, within four (4) years after the transfer was made or the obligation was incurred; or

(3) Under section 55-914(2), Idaho Code, within one (1) year after the transfer was made or the obligation was incurred.

History.

I.C., § 55-918, as added by 1987, ch. 202, § 2, p. 422.

STATUTORY NOTES

Prior Laws.

Former § 55-918 was repealed. See Prior Laws, § 55-910.

202, which is compiled as §§ 55-910 to 55-921.

Compiler's Notes.

The term "this act" refers to S.L. 1987, ch.

JUDICIAL DECISIONS

Cited in: *Klein v. Capital One Fin. Corp.*, 2011 U.S. Dist. LEXIS 83905 (D. Idaho July 29, 2011); *Rainsdon v. Kirtland* (In re

Kirtland), 2011 Bankr. LEXIS 3828 (Bankr. D. Idaho Sept. 30, 2011).

55-919. Application of general law. — Unless displaced by the provisions of this act, the principles of law and equity, including the law merchant and the law relating to principal and agent, estoppel, laches, fraud, misrepresentation, duress, coercion, mistake, insolvency, or other validating or invalidating cause, supplement its provisions.

History.

I.C., § 55-919, as added by 1987, ch. 202, § 2, p. 422.

STATUTORY NOTES

Prior Laws.
Former § 55-919 was repealed. See Prior Laws, § 55-910.

202, which is compiled as §§ 55-910 to 55-921.

Compiler’s Notes.
The term “this act” refers to S.L. 1987, ch.

55-920. Uniformity of application and construction. — This act shall be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of this act among states enacting it.

History.
I.C., § 55-920, as added by 1987, ch. 202, § 2, p. 422.

STATUTORY NOTES

Prior Laws.
Former § 55-920 was repealed. See Prior Laws, § 55-910.

202, which is compiled as §§ 55-910 to 55-921.

Compiler’s Notes.
The term “this act” refers to S.L. 1987, ch.

55-921. Short title. — This act may be cited as the “Uniform Fraudulent Transfer Act.”

History.
I.C., § 55-921, as added by 1987, ch. 202, § 2, p. 422.

STATUTORY NOTES

Prior Laws.
Former § 55-921 was repealed. See Prior Laws, § 55-910.

202, which is compiled as §§ 55-910 to 55-921.

Compiler’s Notes.
The term “this act” refers to S.L. 1987, ch.

55-922. Title of act. [Repealed.]

STATUTORY NOTES

Compiler’s Notes.
This section, which comprised 1969, ch.

463, § 13, p. 1300, was repealed by S.L. 1987, ch. 202, § 1.

CHAPTER 10

HOMESTEADS

SECTION.	SECTION.
55-1001. Definitions.	55-1003. Homestead exemption limited.
55-1002. From what property selected.	55-1004. Automatic homestead exemption —

SECTION.

Conditions — Declaration of
homestead — Declaration of
abandonment.

55-1005. To what judgments subject.

55-1006. Presumption of abandonment —
Declaration of nonabandonment.

55-1007. Conveyance or encumbrance by
husband and wife.

SECTION.

55-1008. Homestead exempt from execution
— When presumed valid.

55-1009. Judgment against homestead
owner — Lien on excess value
of homestead property.

55-1010. Liability for debts of owner.

55-1011. Exemption of pension money and
retirement or profit-sharing
benefits from legal processes.

55-1001. Definitions. — For purposes of this chapter:

(1) "Dwelling house" and "mobile home" include manufactured housing.

(2) "Homestead" means and consists of the dwelling house or the mobile home in which the owner resides or intends to reside, with appurtenant buildings, and the land on which the same are situated and by which the same are surrounded, or improved; or unimproved land owned with the intention of placing a house or mobile home thereon and residing thereon. A mobile home may be exempted under this chapter whether or not it is permanently affixed to the underlying land and whether or not the mobile home is placed upon a lot owned by the mobile home owner. Property included in the homestead must be actually intended or used as a principal home for the owner.

(3) "Net value" means market value less all liens and encumbrances.

(4) "Owner" includes, but is not limited to, a purchaser under a deed of trust, mortgage, or contract, or a person who takes the subject property under a life estate.

History.

I.C., § 55-1001, as added by 1989, ch. 371,
§ 2, p. 933; am. 2000, ch. 226, § 1, p. 622.

STATUTORY NOTES

Cross References.

Exemption of property from attachment or
levy, § 11-601 et seq.

Prior Laws.

Former §§ 55-1001 to 55-1008, which comprised 1863, p. 575, §§ 1, 2; reen. 1897, p. 10, § 1; reen 1899, p. 293, § 1; R.S., §§ 3036 to 3042; reen. R.C. & C.L., §§ 3173 to 3180; C.S.,

§§ 5437 to 5444; am. 1923, ch. 20, § 1, p. 20; I.C.A., §§ 54-1001 to 54-1008; am. 1984, ch. 53, § 1, p. 93, were repealed by S.L. 1989, ch. 371, § 1.

Effective Dates.

Section 3 of S.L. 2000, ch. 226 provided that the act shall be in full force and effect on and after July 1, 2000.

JUDICIAL DECISIONS

ANALYSIS

Appliances.

Lots used as single parcel.

Mobile home.

Motor home.

Period residence.

Principal home of owner.

Residence outside of state.

Single exemption.

Tenants.

Appliances.

Appliances purchased by Chapter 7 debtors with exempt proceeds from the sale of their old homestead for installation in their new homestead were not exempt under § 55-1008, because the definition of homestead in subsection (2) does not include fixtures or appliances. In re Cerchione, 398 B.R. 699 (Bankr. D. Idaho 2009).

Lots Used as Single Parcel.

The statutes contain no restriction on the area of the property subject to the homestead, rather, the law utilizes a value limitation in restricting the extent of the exemption and since the unimproved lot physically “surrounds” the improved lot, and the two lots have been utilized by its owner as a single parcel, it is of no consequence that the parcel is legally or physically capable of being divided and sold as two tracts. In re Millsap, 122 Bankr. 577 (Bankr. D. Idaho 1991).

Mobile Home.

A mobile home may be claimed as a homestead exemption in bankruptcy proceedings, but may not be claimed as a personal property exemption. In re Rogers, 225 Bankr. 755 (Bankr. D. Idaho 1998).

Motor Home.

Motor home, purchased with proceeds from debtors’ residence, in which debtors physically reside and intend to continue to reside, qualified for a homestead exemption. In re Peters, 168 Bankr. 710 (Bankr. D. Idaho 1994).

Period Residence.

Although debtor and his family resided only periodically in a particular dwelling, since he did not intend to abandon the residence as his home, and any temporary absences from the residence were occasioned by reasonable causes, the absences were not inconsistent with debtor’s right to the homestead exemption. In re Tiffany, 106 Bankr. 213 (Bankr. D. Idaho 1989).

Principal Home of Owner.

Where debtor claimed cabin as exempt and he did spend considerable time at the cabin, and entertained his family and friends there, his living arrangements elsewhere could be adequately explained as being closer to his workplace and did not show he intended to abandon his residence. In re Millsap, 122 Bankr. 577 (Bankr. D. Idaho 1991).

Debtor attempted to claim an exemption in her joint interest in a mobile home under 11 U.S.C.S. § 522(b)(3)(B); Idaho law permitted the debtor’s creditors to reach her interest in the mobile home because the debtor could not use her mother’s homestead exemption to protect her own interest in the mobile home when she already claimed a homestead exemption in another home where she resided, and the debtor could not circumvent the prohibition against claiming multiple homestead exemptions under subsection (2) of this section. In re Antonie, 447 B.R. 610 (D. Idaho 2011).

Residence Outside of State.

Under 11 U.S.C.S. § 522(b)(3)(A), Chapter 7 debtors who resided in Idaho were required to apply the Idaho homestead exemption, §§ 55-1003, 55-1004, and this section. The debtors could not apply the Idaho homestead exemption to a home located in Washington state and could not apply Washington state homestead law to their case in Idaho. In re Harris, 2010 Bankr. LEXIS 2020 (Bankr. D. Idaho June 23, 2010).

Idaho law does not permit a debtor to claim a homestead exemption on real property located outside of the state. In re Stephens, 2011 Bankr. LEXIS 1689 (Bankr. D. Idaho May 10, 2011).

Single Exemption.

This section contemplates only one dwelling, subject to only one homestead claim of exemption, and the land on which it is situated. In re Tiffany, 106 Bankr. 213 (Bankr. D. Idaho 1989).

Tenants.

The fact a tenant is renting a portion of debtor’s property and is living in a mobile home on that property is a material factor in determining the extent of debtor’s homestead, since the tenant could conceivably also declare a homestead exemption on the property under this section. In re Tiffany, 106 Bankr. 213 (Bankr. D. Idaho 1989).

Cited in: In re Cavanaugh, 175 Bankr. 369 (Bankr. D. Idaho 1994); In re Kline, 350 B.R. 497 (Bankr. D. Idaho 2005); Thorp v. Gugino (In re Thorp), 2009 U.S. Dist. LEXIS 71435 (D. Idaho Aug. 12, 2009); In re Capps, 438 B.R. 668 (Bankr. D. Idaho 2010); In re Hassler, 2011 Bankr. LEXIS 1880 (Bankr. D. Idaho May 17, 2011).

RESEARCH REFERENCES

Am. Jur. — 40 Am. Jur. 2d, Homestead, § 1 et seq.

C.J.S. — 40 C.J.S., Homestead, § 1 et seq.

55-1002. From what property selected. — If the owner is married, the homestead may consist of the community or jointly owned property of the spouses or the separate property of either spouse: Provided, that the same premises may not be claimed separately by the husband and wife with the effect of increasing the net value of the homestead available to the marital community beyond the amount specified in section 55-1003, Idaho Code. When the owner is not married, the homestead may consist of any of his or her property.

History.

I.C., § 55-1002, as added by 1989, ch. 371, § 2, p. 933.

STATUTORY NOTES

Prior Laws.

Former § 55-1002 was repealed. See Prior Laws, § 55-1001.

55-1003. Homestead exemption limited. — A homestead may consist of lands, as described in section 55-1001, Idaho Code, regardless of area, but the homestead exemption amount shall not exceed the lesser of (i) the total net value of the lands, mobile home, and improvements as described in section 55-1001, Idaho Code; or (ii) the sum of one hundred thousand dollars (\$100,000).

History.

I.C., § 55-1003, as added by 1989, ch. 371, § 2, p. 933; am. 1992, ch. 14, § 1, p. 38; am. 2006, ch. 262, § 1, p. 814.

STATUTORY NOTES

Prior Laws.

Former § 55-1003 was repealed. See Prior Laws, § 55-1001.

tuted "one hundred thousand dollars" for "fifty thousand dollars."

Effective Dates.

Section 2 of S.L. 2006, ch. 262 declared an emergency. Approved March 30, 2006.

Amendments.

The 2006 amendment, by ch. 262, substi-

JUDICIAL DECISIONS

ANALYSIS

Bankruptcy.

Exemption denied.

Failure to abandon original homestead.

Homestead outside of state.

Bankruptcy.

Where debtor claimed cabin as exempt and he did spend considerable time at the cabin, and entertained his family and friends there, his living arrangements elsewhere could be adequately explained as being closer to his workplace and did not show he intended to abandon his residence. In re Millsap, 122 Bankr. 577 (Bankr. D. Idaho 1991).

Although this section provides for a homestead exemption of up to \$30,000 [now

\$100,000] in value and § 55-1001 defines a homestead to include a mobile home, where debtor voluntarily gave finance company a security interest in the mobile home, the lien arose from an agreement between the parties rather than through a judgment; because the debtor freely consented to imposition of the lien upon the mobile home, the lien was thus not avoidable under 11 U.S.C.S. § 522(f). In re Jensen, 141 Bankr. 733 (Bankr. D. Idaho 1992).

Where bankruptcy debtors were the sole principals of a closely held corporation, and the debtors were the majority owners of a limited liability company (LLC) which purchased real property with a mobile home and leased the property to the corporation, the debtors could not claim a homestead exemption since the property was owned by the LLC rather than the debtors; although the debtors resided in the mobile home, the debtors were merely at-will subtenants of the mobile home under an oral lease with the corporation, and the debtors were precluded from claiming a homestead exemption in the leasehold. In re LaVelle, 350 B.R. 505 (Bankr. D. Idaho 2005).

Chapter 7 debtors were entitled to a \$100,000 homestead exemption on their home under construction under § 55-1008(1) and this section, because, within one year of receipt, they used identifiable funds from the sale of their old homestead to help finance construction of their new homestead. In re Cerchione, 398 B.R. 699 (Bankr. D. Idaho 2009).

Bankruptcy court found no clear or unmistakable act or series of acts indicating a married debtor's intent to abandon debtor's homestead because the factors considered by the court evinced the debtor's intent on the date when the debtor filed for bankruptcy not to abandon the marital home, despite the debtor's marital problems and temporary job related residence in another state. In re Forshee, 2010 Bankr. LEXIS 3044 (Bankr. D. Idaho Sept. 16, 2010).

Chapter 7 debtor who moved to Idaho, where she lived in an apartment, so that she could continue to be employed by the employer for whom she had worked in Colorado, where she still owned a home in which her mother lived, was not entitled to claim a homestead exemption under this section for the Colorado home. In re Capps, 438 B.R. 668 (Bankr. D. Idaho 2010).

Exemption Denied.

Where the debtors sought to claim a vacant parcel as their homestead, but failed to state in their certificate of homestead of record at the time of their bankruptcy filing that they intended to reside there, the certificate did not meet the strict requirements of § 55-1004(3) and was defective. In re Taggart, 2009 Bankr. LEXIS 3509 (Bankr. D. Idaho Oct. 27, 2009).

Under 11 U.S.C.S. § 522(b)(3)(A), Chapter 7 debtors who resided in Idaho were required to apply the Idaho homestead exemption, §§ 55-1001, 55-1004, and this section. The debtors could not apply the Idaho homestead exemption to a home located in Washington state and could not apply Washington state homestead law to their case in Idaho. In re Harris, 2010 Bankr. LEXIS 2020 (Bankr. D. Idaho June 23, 2010).

Failure to Abandon Original Homestead.

Debtors were not entitled to the validation of their homestead exemption by default; their failure to comply with the requirement of abandoning their original homestead was fatal to their exemption claim under this section. Judgment lien creditors had enforceable claims under 11 U.S.C.S. § 522(f), and one was entitled to relief from the automatic stay under 11 U.S.C.S. § 362(d)(2). In re Gardner, 417 B.R. 616 (Bankr. D. Idaho 2009).

Homestead Outside of State.

Idaho law does not permit a debtor to claim a homestead exemption on real property located outside of the state. In re Stephens, 2011 Bankr. LEXIS 1689 (Bankr. D. Idaho May 10, 2011).

Cited in: In re Peters, 168 Bankr. 710 (Bankr. D. Idaho 1994); In re Bailey, 2011 Bankr. LEXIS 1528 (Bankr. D. Idaho Apr. 26, 2011); In re Hassler, 2011 Bankr. LEXIS 1880 (Bankr. D. Idaho May 17, 2011).

55-1004. Automatic homestead exemption — Conditions — Declaration of homestead — Declaration of abandonment. — (1) Property described in section 55-1001, Idaho Code, constitutes a homestead and is automatically protected by the exemption described in section 55-1003, Idaho Code, from and after the time the property is occupied as a principal residence by the owner or, if the homestead is unimproved or improved land that is not yet occupied as a homestead, from and after the declaration or declarations required in this section are filed for record or, if the homestead is a mobile home not yet occupied as a homestead and located on land not owned by the owner of the mobile home, from and after delivery of a declaration as described in section 55-1006, Idaho Code.

(2) An owner who selects a homestead from unimproved or improved land that is not yet occupied as a homestead must execute a declaration of homestead and file the same for record in the office of the recorder of the

county in which the land is located. However, if the owner also owns another parcel of property on which the owner presently resides or in which the owner claims a homestead, the owner must also execute a declaration of abandonment of homestead on that other property and file the same for record with the recorder of the county in which the land is located.

(3) The declaration of homestead must contain:

(a) A statement that the person making it is residing on the premises or intends to reside thereon and claims the premises as a homestead;

(b) A legal description of the premises; and

(c) An estimate of the premises actual cash value.

(4) The declaration of abandonment must contain:

(a) A statement that a premises occupied as a residence or claimed as a homestead no longer constitutes the owner's homestead;

(b) A legal description of the premises; and

(c) A statement of the date of abandonment.

(5) The declaration of homestead and declaration of abandonment of homestead must be acknowledged in the same manner as a grant of real property is acknowledged.

History.

I.C., § 55-1004, as added by 1989, ch. 371,
§ 2, p. 933.

STATUTORY NOTES

Prior Laws.

Former § 55-1004 was repealed. See Prior Laws, § 55-1001.

JUDICIAL DECISIONS

ANALYSIS

Automatic homestead.

Declared homestead.

Exemption denied.

Failure to abandon original homestead.

Homestead outside of state.

Interrupted occupation.

Lien subject to exemption.

Motor home.

Automatic Homestead.

Where Chapter 7 debtors sought a homestead exemption on their home under construction, the debtors did not qualify for a homestead exemption under subsection (2), because they neither executed nor recorded a declaration of homestead as to the property and because they did not occupy the property as their residence. In re Cerchione, 398 B.R. 699 (Bankr. D. Idaho 2009).

Where a debtor and her husband purchased a property as a married couple and resided there as their principal residence, the prop-

erty was automatically protected by a homestead exemption under this section, and a creditor's judgment, which was recorded thereafter, did not attach as a judgment lien pursuant to § 10-1110. However, when the debtor quitclaimed her interest to her husband and then he later quitclaimed her interest back, the judgment lien attached to her new interest at the same that she reacquired that interest. Because those acts occurred simultaneously, the debtor did not have an ownership interest, or a homestead exemption, prior to the lien affixing, and the prop-

erty was subject to the judgment lien under § 55-1005. In re Hassler, 2011 Bankr. LEXIS 1880 (Bankr. D. Idaho May 17, 2011).

Declared Homestead.

Debtors failed to establish that they acquired a homestead exemption on real property where they did not actually reside, where they failed to formally declare an abandonment of their automatic homestead on the property where they did reside or to estimate the cash value of the nonresidence, as required by this section. Thorp v. Gugino (In re Thorp), 2009 U.S. Dist. LEXIS 71435 (D. Idaho Aug. 12, 2009).

Even if a Chapter 7 debtor who resided in an apartment in Idaho, where she worked, might otherwise have been entitled to claim a homestead exemption as to a home that she owned in Colorado, her failure to execute and file a declaration of homestead pursuant to this section foreclosed the successful assertion of any such claim in a bankruptcy court. In re Capps, 438 B.R. 668 (Bankr. D. Idaho 2010).

Exemption Denied.

Where the debtors sought to claim a vacant parcel as their homestead pursuant to § 55-1003, but failed to state in their certificate of homestead of record at the time of their bankruptcy filing that they intended to reside there, the certificate did not meet the strict requirements of this section. In re Taggart, 2009 Bankr. LEXIS 3509 (Bankr. D. Idaho Oct. 27, 2009).

Under 11 U.S.C.S. § 522(b)(3)(A), Chapter 7 debtors who resided in Idaho were required to apply the Idaho homestead exemption, §§ 55-1001, 55-1003, and this section. The debtors could not apply the Idaho homestead exemption to a home located in Washington state and could not apply Washington state homestead law to their case in Idaho. In re Harris, 2010 Bankr. LEXIS 2020 (Bankr. D. Idaho June 23, 2010).

Failure to Abandon Original Homestead.

Debtors were not entitled to the validation

of their homestead exemption by default; their failure to comply with the requirement of abandoning their original homestead was fatal to their exemption claim. In re Gardner, 417 B.R. 616 (Bankr. D. Idaho 2009).

Homestead Outside of State.

Idaho law does not permit a debtor to claim a homestead exemption on real property located outside of the state. In re Stephens, 2011 Bankr. LEXIS 1689 (Bankr. D. Idaho May 10, 2011).

Interrupted Occupation.

Where the debtors resided in a residence before a lien attached and before moving to another town for six months, the homestead exemption was established in the property from and after the time they occupied it as their principal residence, unless they later abandoned or lost it. In re Koopal, 226 Bankr. 888 (Bankr. D. Idaho 1998).

Lien Subject to Exemption.

Where the court found that debtor occupied property claimed in homestead exemption in the sense contemplated by the statute, as an occupant, the homestead exemption automatically came into existence when the new statute became effective on July 1, 1989; a judgment lien not legally effective until recorded on July 5, 1989, was subordinate and subject to debtor's homestead exemption claim. In re Millsap, 122 Bankr. 577 (Bankr. D. Idaho 1991).

Motor Home.

Motor home, purchased with proceeds from debtors' residence, in which debtors physically reside and intend to continue to reside, qualified for a homestead exemption. In re Peters, 168 Bankr. 710 (Bankr. D. Idaho 1994).

Cited in: In re Cavanaugh, 175 Bankr. 369 (Bankr. D. Idaho 1994); In re Forshee, 2010 Bankr. LEXIS 3044 (Bankr. D. Idaho Sept. 16, 2010).

RESEARCH REFERENCES

A.L.R. — Extraterritorial application of state's homestead exemption pursuant to bankruptcy code § 522. 47 A.L.R. Fed 2d 335.

Reduction, under § 522(o) of Bankruptcy Code, 11 U.S.C.S. § 522(o), of value of interest in property claimed by debtor as homestead. 48 A.L.R. Fed 2d 569.

Construction and application of Bankruptcy Abuse Prevention and Consumer Protection Act's (BAPCPA) limitation of homestead exemption, 11 U.S.C.S. § 522(p). 52 A.L.R. Fed 2d 541.

55-1005. To what judgments subject. — The homestead is subject to execution or forced sale in satisfaction of judgments obtained:

(1) Before the homestead was in effect, and which constitute liens upon

the premises; or in an action in which an attachment was levied upon the premises before the homestead became effective.

(2) On debts secured by mechanic's, laborer's or vendor's lien upon the premises.

(3) On debts secured by mortgages, deeds of trust or other consensual liens upon the premises, executed and acknowledged by the husband and wife or by an unmarried claimant.

(4) On debts secured by mortgages, deeds of trust or other consensual liens upon the premises, executed and recorded before the homestead became effective.

History.

I.C., § 55-1005, as added by 1989, ch. 371, § 2, p. 933.

STATUTORY NOTES

Prior Laws.

Former § 55-1005 was repealed. See Prior Laws, § 55-1001.

JUDICIAL DECISIONS

ANALYSIS

Recordation of mortgage.

Timing of lien.

Recordation of Mortgage.

Where a mortgage was recorded in 1979, prior to the homestead declaration in 1982, the homestead exemption was not superior to the mortgage which had been filed of record prior to the declaration of homestead. *Federal Land Bank v. Parsons*, 118 Idaho 324, 796 P.2d 533 (Ct. App. 1990).

Where creditor recorded a judgment in the county recorder's office in July 2010, a judgment lien in favor of the creditor would attach to all of debtor's after-acquired property in that county until the judgment is satisfied or lapses. When debtor purchased a home in the county in September 2010, creditor's lien affixed to the property immediately. Thus, although debtor filed a homestead declaration two days later, the property was not exempt from execution because of the priority of the judgment lien. *In re Bailey*, 2011 Bankr. LEXIS 1528 (Bankr. D. Idaho Apr. 26, 2011).

Timing of lien.

Where a debtor and her husband purchased

a property as a married couple and resided there as their principal residence, the property was automatically protected by a homestead exemption under § 55-1004, and a creditor's judgment, which was recorded thereafter, did not attach as a judgment lien pursuant to § 10-1110. However, when the debtor quitclaimed her interest to her husband and then he later quitclaimed her interest back, the judgment lien attached to her new interest at the same that she reacquired that interest. Because those acts occurred simultaneously, the debtor did not have an ownership interest, or a homestead exemption, prior to the lien affixing, and the property was subject to the judgment lien under this section. *In re Hassler*, 2011 Bankr. LEXIS 1880 (Bankr. D. Idaho May 17, 2011).

Cited in: *University of Utah Hosp. ex rel. Scarberry v. Board of County Comm'rs*, 116 Idaho 434, 776 P.2d 443 (1989).

OPINIONS OF ATTORNEY GENERAL

Absent collusion between the creditor and a spouse who is the sole signer on a promissory note, the non-obligated spouse's signature on a deed of trust or mortgage should be suffi-

cient to make the real property available to satisfy a secured loan in the event of default. OAG 05-1.

RESEARCH REFERENCES

A.L.R. — Extraterritorial application of state's homestead exemption pursuant to bankruptcy code § 522. 47 A.L.R. Fed 2d 335.

Reduction, under § 522(o) of Bankruptcy Code, 11 U.S.C.S. § 522(o), of value of interest in property claimed by debtor as homestead. 48 A.L.R. Fed 2d 569.

Construction and application of Bankruptcy Abuse Prevention and Consumer Protection Act's (BAPCPA) limitation of homestead exemption, 11 U.S.C.S. § 522(p). 52 A.L.R. Fed 2d 541.

55-1006. Presumption of abandonment — Declaration of nonabandonment. — A homestead is presumed abandoned if the owner vacates the property for a continuous period of at least six (6) months. However, if an owner is going to be absent from the homestead for more than six (6) months but does not intend to abandon the homestead, and has no other principal residence, the owner may execute and acknowledge, in the same manner as a grant of real property is acknowledged, a declaration of nonabandonment of homestead and file the declaration for record in the office of the recorder of the county in which the property is situated. The declaration of nonabandonment of homestead must contain:

(1) A statement that the owner claims the property as a homestead, that the owner intends to occupy the property in the future, and that the owner claims no other property as a homestead;

(2) A statement of where the owner will be residing while absent from the homestead property, the estimated duration of the owner's absence, and the reason for the absence; and

(3) A legal description of the homestead property.

History.

I.C., § 55-1006, as added by 1989, ch. 371, § 2, p. 933.

STATUTORY NOTES

Prior Laws.

Former § 55-1006 was repealed. See Prior Laws, § 55-1001.

JUDICIAL DECISIONS

ANALYSIS

Abandonment.

Bankruptcy.

Homestead outside of state.

Lots used as single parcel.

Rebuttal of presumption.

Abandonment.

Because the debtor moved from Idaho to Utah around October 1, 2009, and filed a bankruptcy petition on December 22, 2009, the statutory presumption of abandonment under this section did not apply. However, an absence of any length, presuming the debtor intended to make another residence his principal residence and to abandon a previous

one, could have constituted an abandonment. In *re Forshee*, 2010 Bankr. LEXIS 3044 (Bankr. D. Idaho Sept. 16, 2010).

Chapter 7 debtor who resided in an apartment in Idaho, where she worked, visiting her "permanent residence" in Colorado every six months, was not entitled to exempt her interest in the Colorado property as her homestead given the presumption, albeit rebuttable, cre-

ated by this section, that absence from a residence for six months or more constituted "abandonment" of such a purported homestead. In re Capps, 438 B.R. 668 (Bankr. D. Idaho 2010).

The factors a court will consider when determining whether a homestead has been abandoned include: 1) whether there is evidence of the debtor's actual intent to abandon the homestead; 2) whether the debtor asserted the homestead exemption in the bankruptcy schedules, suggesting an intent not to abandon; and 3) whether the debtor's current residence is in the nature of a short-term rental. In re Marcovitz, — Bankr. —, 2011 Bankr. LEXIS 4132 (Bankr. D. Idaho Oct. 25, 2011).

Bankruptcy.

Where debtor claimed cabin as exempt and he did spend considerable time at the cabin, and entertained his family and friends there, his living arrangements elsewhere could be adequately explained as being closer to his workplace and did not show he intended to abandon his residence. In re Millsap, 122 Bankr. 577 (Bankr. D. Idaho 1991).

Where prior to filing their bankruptcy petition, debtors did not live in the residence for a continuous period of over six months and their declaration of nonabandonment was filed over six months after they ceased to reside in the residence, where they did not file their declaration until after they filed their bankruptcy petition, and at the time they filed their declaration, the residence was the property of the estate and not property of the debtors, and where it was thus questionable whether they had standing to file the declaration and they did not file their declaration until after the creditor filed its objection to their claim of homestead, this section applied and the debtors were presumed to have abandoned the homestead. In re Cavanaugh, 175 Bankr. 369 (Bankr. D. Idaho 1994).

Homestead Outside of State.

Idaho law does not permit a debtor to claim a homestead exemption on real property located outside of the state. In re Stephens, 2011 Bankr. LEXIS 1689 (Bankr. D. Idaho May 10, 2011).

Lots Used as Single Parcel.

The statutes contain no restriction on the area of the property subject to the homestead, rather, the law utilizes a value limitation in restricting the extent of the exemption and since the unimproved lot physically "sur-

rounds" the improved lot, and the two lots have been utilized by its owner as a single parcel, it is of no consequence that the parcel is legally or physically capable of being divided and sold as two tracts. In re Millsap, 122 Bankr. 577 (Bankr. D. Idaho 1991).

Rebuttal of Presumption.

There is no indication in this section that the presumption of nonabandonment of a homestead is irrebuttable. In re Cavanaugh, 175 Bankr. 369 (Bankr. D. Idaho 1994).

Where there was no indication that creditors relied upon the presumption of nonabandonment of a homestead in allowing debtors to become indebted to them, where debtors' declaration of nonabandonment failed and debtors were deemed to have abandoned the homestead, where evidence showed that the debtors executed a contract to sell the residence and, pursuant to the contract, debtors vacated the property and the buyers moved in prior to closing but the sale fell through, where debtors never established another homestead, and where after the sale fell through, the buyers refused to vacate the premises, whereupon debtors immediately took steps to have the buyers evicted and debtors subsequently reoccupied the residence, such evidence was sufficient to show debtors did not intend to abandon the residence as a homestead to rebut the presumption of abandonment of a homestead. In re Cavanaugh, 175 Bankr. 369 (Bankr. D. Idaho 1994).

Where testimony reflected that the debtors did not give any thought one way or the other as to abandonment of the homestead property when hope of employment elsewhere led them to move to a temporary, rented, residence, it was sufficient to rebut the presumption of abandonment. In re Koopal, 226 Bankr. 888 (Bankr. D. Idaho 1998).

Debtor had an automatic homestead under § 55-1004(a) because she owned and resided in her house for several years, but the property was presumed abandoned under this section, when she vacated it under a state court order that was issued pursuant to a divorce. However, she rebutted the presumption of abandonment, as there was no indication that she actually intended to abandon her homestead exemption, she amended her bankruptcy schedules to assert the homestead exemption, and she indicated that she intended to move back into the house until it was sold. In re Marcovitz, — Bankr. —, 2011 Bankr. LEXIS 4132 (Bankr. D. Idaho Oct. 25, 2011).

55-1007. Conveyance or encumbrance by husband and wife. — The homestead of a married person cannot be conveyed or encumbered unless the instrument by which it is conveyed or encumbered is executed

and acknowledged by both husband and wife, except that a husband or a wife or both jointly may make and execute powers of attorney for the conveyance or encumbrance of the homestead.

History.

I.C., § 55-1007, as added by 1989, ch. 371, § 2, p. 933.

STATUTORY NOTES

Prior Laws.

Former § 55-1007 was repealed. See Prior Laws, § 55-1001.

JUDICIAL DECISIONS

Execution by One Spouse.

Where debtors' testimony did not prove that they had entered into a common law marriage prior to 1996, when the Idaho legislature prohibited such relationships, the chapter 7

trustee could not avoid deeds of trust executed only by the putative husband. *Hopkins v. Countrywide Home Loans, Inc.* (In re Nakamura), 2008 Bankr. LEXIS 4854 (Bankr. D. Idaho Jan. 22, 2008).

55-1008. Homestead exempt from execution — When presumed valid. — (1) Except as provided in section 55-1005, Idaho Code, the homestead is exempt from attachment and from execution or forced sale for the debts of the owner up to the amount specified in section 55-1003, Idaho Code. The proceeds of the voluntary sale of the homestead in good faith for the purpose of acquiring a new homestead, and proceeds from insurance covering destruction of homestead property held for use in restoring or replacing the homestead property, up to the amount specified in section 55-1003, Idaho Code, shall likewise be exempt for one (1) year from receipt, and also such new homestead acquired with such proceeds.

(2) Every homestead created under this chapter is presumed to be valid to the extent of all the property claimed exempt, until the validity thereof is contested in a court of general jurisdiction in the county in which the homestead is situated.

History.

I.C., § 55-1008, as added by 1989, ch. 371, § 2, p. 933.

STATUTORY NOTES

Prior Laws.

Former § 55-1008 was repealed. See Prior Laws, § 55-1001.

JUDICIAL DECISIONS

ANALYSIS

Construction.

Proceeds of voluntary sale.

Construction.

The statute clearly states that the terms “attachment,” “execution” and “forced sale” involve judicial proceedings, and by no stretch of its plain language can it be deemed to include a voluntary, contractual right of set-off. *Lares v. West One Bank*, 188 F.3d 1166 (9th Cir. 1999).

Proceeds of Voluntary Sale.

Although this section exempts the proceeds of the voluntary sale of a homestead for one year from receipt, where at time bankruptcy case was reopened and the adversary proceeding to avoid judicial liens commenced, the proceeds from the sale of mobile home had already been disbursed to the lien creditors, and the liens extinguished, debtors had no interest in the proceeds at that time and, therefore, had no right to avoid any liens. In *re Kudrna*, 173 Bankr. 934 (Bankr. D. Idaho 1994).

Bankruptcy court found that a debtor who lived two to three days a week in a house he owned, and the rest of the time at his fiancée’s house, did not intend to abandon the house he owned until he sold it, and it allowed the debtor to claim \$79,916 he received from the sale of the house as exempt property derived from the sale of a homestead. In *re Younger*, 373 B.R. 111 (Bankr. D. Idaho 2007).

Chapter 7 debtors were entitled to a \$100,000 homestead exemption on their home under construction under § 55-1003 and this section, because, within one year of receipt, they used identifiable funds from the sale of their old homestead to help finance construction of the new homestead. In *re Cerchione*, 398 B.R. 699 (Bankr. D. Idaho 2009).

Appliances purchased by Chapter 7 debtors with exempt proceeds from the sale of their old homestead for installation in their new homestead were not exempt under this section, because the definition of homestead in § 55-1001(2) does not include fixtures or appliances. In *re Cerchione*, 398 B.R. 699 (Bankr. D. Idaho 2009).

Although this section did not provide for equitable tolling of the one-year period for reinvesting proceeds from a sale of a homestead, it was applied where a debtor did not have unrestricted access to the proceeds, first because of a divorce action, then because of the automatic stay, and then because a trustee’s objection to the debtor’s claim of exemption in the sale proceeds was filed. In *re Marriott*, 427 B.R. 887 (Bankr. D. Idaho 2010).

Cited in: In *re Tiffany*, 106 Bankr. 213 (Bankr. D. Idaho 1989).

55-1009. Judgment against homestead owner — Lien on excess value of homestead property. — A judgment against the owner of a homestead shall become a lien on the value of the homestead property in excess of the homestead exemption from the time the judgment creditor records the judgment with the recorder of the county where the property is located.

History.

I.C., § 55-1009, as added by 1989, ch. 371, § 2, p. 933.

55-1010. Liability for debts of owner. — The homestead shall not be held liable for the debts of the owner, except as provided in this title or in section 56-218, Idaho Code.

History.

I.C., § 55-1010, as added by 2004, ch. 131, § 2, p. 450.

STATUTORY NOTES**Prior Laws.**

Former section which comprised I.C., § 55-1010, as added by 1989, ch. 371, § 2, p. 933;

am. 1992, ch. 67, § 1, p. 201; am. 2000, ch. 226, § 2, p. 622, was repealed by S.L. 2004, ch. 123, § 5 and ch. 131, § 1.

55-1011. Exemption of pension money and retirement or profit-sharing benefits from legal processes. — (1) Except as provided in

subsection (2) of this section, any money or other assets payable to a participant or beneficiary from or any interest of any participant or beneficiary in, a retirement or profit-sharing plan that is qualified under sections 401(a), 403(a), 403(b), 408, 408A or 409 of the internal revenue code, as amended, is exempt from all claims of judgment creditors of the beneficiary or participant arising out of a negligent or otherwise wrongful act or omission of the beneficiary or participant resulting in monetary damages to the judgment creditor. The exemption provided by this subsection shall be in addition to that provided in this chapter.

(2) Any plan or arrangement described in subsection (1) of this section is not exempt from the claims of an alternate payee under a qualified domestic relations order. However, the interest of any alternate payee under a qualified domestic relations order is exempt from all claims of any creditor, other than the department of health and welfare, or the alternate payee. As used in this subsection, the terms "alternate payee" and "qualified domestic relations order" have the meanings ascribed to them in section 414(p) of the internal revenue code of 1986.

(3) The provisions of subsection (1) of this section apply to any proceeding that is filed on or after July 1, 1988.

History.

I.C., § 55-1201A, as added by 1988, ch. 358,

§ 1, p. 1060; am. and redesign. 1989, ch. 371,

§ 3, p. 933; am. 1999, ch. 337, § 1, p. 915.

STATUTORY NOTES**Federal References.**

Sections 401(a), 403(a), 403(b), 408, 408A, 409, and 414(p) of the Internal Revenue Code of 1986, referred to in subsections (1) and (2), are compiled as 26 U.S.C.S. §§ 401(1), 403(a), 403(b), 408, 408A, 409, and 414(p).

Compiler's Notes.

This section was formerly compiled as § 55-1201A.

CHAPTER 11**SALE OF HOMESTEAD ON EXECUTION****SECTION.**

- 55-1101. Execution against homestead.
- 55-1102. Application for appraisement.
- 55-1103. Filing of application.
- 55-1104. Notice of hearing.
- 55-1105. Appointment of appraisers.
- 55-1106. Oath of appraisers.
- 55-1107. Appraisal.
- 55-1108. Report of appraisers.

SECTION.

- 55-1109. Order setting aside exempt portion.
- 55-1110. Order for sale of premises.
- 55-1111. Bid must exceed exemption.
- 55-1112. Disposal of proceeds of sale.
- 55-1113. Exemption of proceeds of sale.
- 55-1114. Compensation of appraisers.
- 55-1115. Costs of proceedings.

55-1101. Execution against homestead. — When an execution for the enforcement of a judgment, obtained in a case not within the classes before enumerated, is levied upon the homestead, the judgment creditor may apply to the district court of the county in which the homestead is situated for the appointment of persons to appraise the value thereof.

History.

1863, p. 575, § 3; R.S., § 3043; reen. R.C. &

C.L., § 3181; C.S., § 5445; I.C.A., § 54-1101; am. 2012, ch. 20, § 25, p. 66.

STATUTORY NOTES**Cross References.**

Homestead, general provisions, § 55-1001 et seq.

Amendments.

The 2012 amendment, by ch. 20, substituted "district court" for "probate judge".

Compiler's Notes.

The phrase "within the classes before enumerated" refers to provisions originally enacted by S.L. 1863, p. 575, §§ 1 and 2, which were eventually compiled as §§ 55-1001 to 55-1008 and which were repealed by S.L. 1989, ch. 371, § 1.

JUDICIAL DECISIONS**Jurisdiction of Bankruptcy Court.**

Where bankruptcy proceedings were begun before sale of homestead, bankruptcy court acquired jurisdiction to determine time and manner of setting aside homestead. *Bank of Nez Perce v. Pindel*, 193 F. 917 (9th Cir. 1912).

Where bankrupt's homestead was worth \$9,000, property should be sold if he were

unable or refused to pay the \$4,000 surplus to the estate. *Bank of Nez Perce v. Pindel*, 193 F. 917 (9th Cir. 1912) (decided under \$5000 homestead limit).

Cited in: *Roark v. Koelsch*, 62 Idaho 626, 115 P.2d 95 (1941).

55-1102. Application for appraisalment. — The application must be made upon a verified petition, showing:

1. The fact that an execution has been levied upon the homestead.
2. The name of the claimant.
3. That the value of the homestead exceeds the amount of the homestead exemption.

History.

1863, p. 575, § 3; R.S., § 3044; reen. R.C. & C.L., § 3182; C.S., § 5446; I.C.A., § 54-1102.

55-1103. Filing of application. — The petition must be filed with the clerk of the district court.

History.

R.S., § 3045; reen. R.C. & C.L., § 3183;

C.S., § 5447; I.C.A., § 54-1103; am. 2012, ch. 20, § 26, p. 66.

STATUTORY NOTES**Amendments.**

The 2012 amendment, by ch. 20, substituted "district court" for "probate court".

55-1104. Notice of hearing. — A copy of the petition, with a notice of the time and place of hearing, must be served upon the claimant at least two (2) days before the hearing.

History.

R.S., § 3046; reen. R.C. & C.L., § 3184; C.S., § 5448; I.C.A., § 54-1104.

55-1105. Appointment of appraisers. — At the hearing the judge

may, upon proof of the service of a copy of the petition and notice, and of the facts stated in the petition, appoint three (3) disinterested residents of the county to appraise the value of the homestead.

History.

1863, p. 575, § 3; R.S., § 3047; reen. R.C. & C.L., § 3185; C.S., § 5449; I.C.A., § 54-1105.

55-1106. Oath of appraisers. — The persons appointed, before entering upon the performance of their duties, must take an oath to faithfully perform the same.

History.

R.S., § 3048; reen. R.C. & C.L., § 3186; C.S., § 5450; I.C.A., § 54-1106.

JUDICIAL DECISIONS

Cited in: In re Smith, 366 F. Supp. 1213 (D. Idaho 1973).

55-1107. Appraisal. — They must view the premises and appraise the value thereof, and if the appraised value exceeds the homestead exemption, they must determine whether the land claimed can be divided without material injury.

History.

1863, p. 575, § 3; R.S., § 3049; reen. R.C. & C.L., § 3187; C.S., § 5451; I.C.A., § 54-1107.

JUDICIAL DECISIONS

Cited in: In re Smith, 366 F. Supp. 1213 (D. Idaho 1973).

55-1108. Report of appraisers. — Within ten (10) days after their appointment they must make to the judge a report in writing, which report must show the appraised value and their determination upon the matter of a division of the land claimed.

History.

1863, p. 575, § 3; R.S., § 3050; reen. R.C. & C.L., § 3188; C.S., § 5452; I.C.A., § 54-1108.

55-1109. Order setting aside exempt portion. — If, from the report, it appears to the judge that the land claimed can be divided without material injury, he must, by an order, direct the appraisers to set off to the claimant so much of the land, including the residence, as will amount in value to the homestead exemption, and the execution may be enforced against the remainder of the land.

History.

1863, p. 575, § 3; R.S., § 3051; reen. R.C. & C.L., § 3189; C.S., § 5453; I.C.A., § 54-1109.

55-1110. Order for sale of premises. — If, from the report, it appear to the judge that the land claimed exceeds in value the amount of the homestead exemption, and that it cannot be divided, he must make an order directing its sale under the execution.

History.

1863, p. 575, § 3; R.S., § 3052; reen. R.C. & C.L., § 3190; C.S., § 5454; I.C.A., § 54-1110.

JUDICIAL DECISIONS

Jurisdiction of Bankruptcy Court.

Where bankruptcy proceedings were begun before sale of homestead, bankruptcy court acquired jurisdiction to determine time and manner of setting aside homestead. *Bank of Nez Perce v. Pindel*, 193 F. 917 (9th Cir. 1912).

Where bankrupt's homestead was worth \$9000, property should be sold if he were unable or refused to pay the \$4000 surplus to the estate. *Bank of Nez Perce v. Pindel*, 193 F. 917 (9th Cir. 1912) (decided under \$5000 homestead limit).

55-1111. Bid must exceed exemption. — At such sale no bid must be received unless it exceeds the amount of the homestead exemption.

History.

1863, p. 575, § 3; R.S., § 3053; reen. R.C. & C.L., § 3191; C.S., § 5455; I.C.A., § 54-1111.

55-1112. Disposal of proceeds of sale. — If the sale is made, the proceeds thereof, to the amount of the homestead exemption, must be paid to the claimant, and the balance applied to the satisfaction of the execution.

History.

1863, p. 575, § 3; R.S., § 3054; reen. R.C. & C.L., § 3192; C.S., § 5456; I.C.A., § 54-1112.

55-1113. Exemption of proceeds of sale. — The money paid to the claimant is entitled, for the period of six (6) months thereafter, to the same protection against legal process and the voluntary disposition of the husband, which the law gives to the homestead.

History.

1863, p. 575, § 3; R.S., § 3055; reen. R.C. & C.L., § 3193; C.S., § 5457; I.C.A., § 54-1113.

JUDICIAL DECISIONS

ANALYSIS

Ability to acquire homestead.

Intent to establish homestead.

Ability to Acquire Homestead.

The filing of a complaint for turnover does not "freeze" homestead proceeds so as to render a debtor unable to purchase a replacement homestead. If the funds remain in the hands of the debtor, he is not inhibited from acquiring a homestead any more than he would be in the absence of the turnover ac-

tion. *Trustee Servs. Corp. v. Deglopper*, 53 Bankr. 95 (Bankr. D. Idaho 1985).

Intent to Establish Homestead.

A debtor's homestead exemption did not extend to the value of an automobile and ring allegedly purchased by a third person for the debtor with proceeds from the sale of the

debtor's homestead, where such purchase demonstrated that the debtor did not intend to use those proceeds to establish a new homestead. *Trustee Servs. Corp. v. Deglopper*, 53 Bankr. 95 (Bankr. D. Idaho 1985).

Where the debtor's use of about 60 percent of the money from the sale of her homestead

for the purchase of nonexempt goods reflected a general lack of concern on her part as to establishing a second homestead, the remaining cash proceeds in her possession were also nonexempt. *Trustee Servs. Corp. v. Deglopper*, 53 Bankr. 95 (Bankr. D. Idaho 1985).

55-1114. Compensation of appraisers. — The court must fix the compensation of the appraisers, not to exceed five dollars (\$5.00) per day each for the time actually engaged.

History.

R.S., § 3056; reen. R.C. & C.L., § 3194; C.S., § 5458; I.C.A., § 54-1114.

55-1115. Costs of proceedings. — The execution creditor must pay the costs of these proceedings in the first instance; but if the appraised value exceeds the homestead exemption the amount so paid must be added as costs on execution, and collected accordingly.

History.

R.S., § 3057; reen. R.C. & C.L., § 3195; C.S., § 5459; I.C.A., § 54-1115.

CHAPTER 12

HOMESTEADS OF HEADS OF FAMILIES

SECTION.

55-1201. Value of homestead. [Repealed.]
55-1201A. [Amended and Redesignated.]

SECTION.

55-1202 — 55-1206. [Repealed.]

55-1201. Value of homestead. [Repealed.]

STATUTORY NOTES

Compiler's Notes.

This section, which comprised 1863, p. 575, § 1; R.S., § 3058; reen. R.C. & C.L., § 3196; C.S., § 5460; I.C.A., § 54-1201; am. 1953, ch. 10, § 1, p. 11; am. 1963, ch. 31, § 1, p. 174;

am. 1979, ch. 296, § 1, p. 779; am. 1984, ch. 234, § 1, p. 563, was repealed by S.L. 1989, ch. 371, § 1. For present law, see §§ 55-1001 to 55-1011.

55-1201A. [Amended and Redesignated.]

STATUTORY NOTES

Compiler's Notes.

Former § 55-1201A was amended and re-

designated as § 55-1011 by § 3 of S.L. 1989, ch. 371.

55-1202 — 55-1206. Head of family — Mode of selection — Declaration — Devolution after death. [Repealed.]

STATUTORY NOTES

Compiler's Notes.

These sections, which comprised 1863, p. 575, § 4; R.S., §§ 3059, 3070 to 3073; reen. R.C. & C.L., §§ 3197 to 3201; C.S., §§ 5461 to

5465; I.C.A., §§ 54-1202 to 54-1206, were repealed by S.L. 1989, ch. 371, § 1. For present law, see §§ 55-1001 to 55-1011.

CHAPTER 13

HOMESTEADS OF PERSONS OTHER THAN HEADS OF FAMILIES

SECTION.

55-1301 — 55-1304. [Repealed.]

55-1301 — 55-1304. Mode of selection — Declaration — Effect. [Repealed.]

STATUTORY NOTES

Compiler's Notes.

These sections, which comprised R.S., §§ 3085 to 3088; reen. R.C. & C.L., §§ 3202 to 3205; C.S., §§ 5466 to 5469; I.C.A., §§ 54-

1301 to 54-1304, were repealed by S.L. 1989, ch. 371, § 1. For present law, see §§ 55-1001 to 55-1011.

CHAPTER 14

UNCLAIMED PROPERTY

SECTION.

55-1401. Property held for charges.
55-1402. Sale of unclaimed property.

SECTION.

55-1403. Disposition of proceeds.
55-1404. Recovery of charges advanced.

55-1401. Property held for charges. — When any goods, merchandise or other property has been received by any railroad or express company, or other common carrier, commission merchant, innkeeper or warehouseman for transportation or safekeeping, and is not delivered to the owner, consignee or other authorized person, the carrier, commission merchant, innkeeper or warehouseman may hold or store the same with some responsible person, until the freight and all just and reasonable charges are paid.

History.

R.S., § 1160; reen. R.C. & C.L., § 1546;
C.S., § 2582; I.C.A., § 54-1401.

STATUTORY NOTES

Cross References.

Disposition of unclaimed property, § 14-501 et seq.

55-1402. Sale of unclaimed property. — If no person calls for the property within four (4) months from the receipt thereof and pays freight and charges thereon, the carrier, commission merchant, innkeeper or warehouseman may sell such property, or so much thereof as will pay freight and charges, at auction to the highest bidder, first having given twenty (20) days' notice of the time and place of sale, to the owner, consignee or consignor, when known, and by advertisement in a daily paper ten (10) days (or if in a weekly paper, four (4) weeks), published where such sale is to take place; and if any surplus is left, after paying freight, storage, cost of advertising and other reasonable charges, the same must be paid over to the owner of such property at any time thereafter, upon demand being made therefor within sixty (60) days after the sale.

History.

R.S., § 1161; compiled and reen. R.C. & C.L., § 1547; C.S., § 2583; I.C.A., § 54-1402.

STATUTORY NOTES

Compiler's Notes.

The words enclosed in parentheses so appeared in the law as enacted.

55-1403. Disposition of proceeds. — If the owner or his agent fails to demand such surplus within sixty (60) days of the time of such sale, then it must be paid into the county treasury, subject to the order of the owner.

History.

R.S., § 1162; reen. R.C. & C.L., § 1548; C.S., § 2584; I.C.A., § 54-1403.

55-1404. Recovery of charges advanced. — When any commission merchant or warehouseman receives, on consignment, produce, merchandise or other property, and makes advances thereon for freight and charges, he may, if the same is not paid to him within four (4) months from the date of such advances, cause the produce, merchandise or property on which the advances were made, to be advertised and sold as provided herein.

History.

R.S., § 1163; reen. R.C. & C.L., § 1549; C.S., § 2585; I.C.A., § 54-1404.

CHAPTER 15
CONDOMINIUM PROPERTY ACT

SECTION.

- 55-1501. Short title.
- 55-1502. Purpose — Public policy.
- 55-1503. Definitions.
- 55-1504. Requirements to qualify.
- 55-1505. Contents of declaration.
- 55-1506. Administration — By-laws — Articles of incorporation — Recor-

SECTION.

- dation required to modify or amend.
- 55-1507. Contents of by-laws.
- 55-1508. Recordation of instruments affecting project.
- 55-1509. Grant — Physical boundaries of units — Incidents excluded —

SECTION.

- Common areas — Decorating rights of owner.
- 55-1510. Removal of property from law — Common ownership — Resubmission.
- 55-1511. Partition — Sale.
- 55-1512. Actions relating to common areas — Persons designated to receive process — New designation filed — Service on auditor — Copy from auditor to management body — Application of corporate law.
- 55-1513. Actions by management on behalf of two or more owners.
- 55-1514. Separate taxation — Lien — Tax deed.
- 55-1515. Owners proportionately liable for common areas — Remaining balance not prejudiced by settlement — Indemnification.
- 55-1516. Liability of unit owners, tenants, employees — Duties and powers of owners.
- 55-1517. Insurance of individual units by management body.
- 55-1518. Assessment and other charges a lien — Notice recorded — Pay-

SECTION.

- ment and release — Priority of liens — Expiration — Extension — Enforcement by sale — Purchase by management body.
- 55-1519. Liens for labor, services or materials — Express consent — Emergency repairs — Proportionate payment for removal of lien.
- 55-1520. Personal property acquired, held and disposed of by management body — Beneficial interest proportionate — Transfer.
- 55-1521. Liberal construction of deeds, declarations or plans for condominium projects.
- 55-1522. Rule against perpetuities and unreasonable restraints on alienation inapplicable.
- 55-1523. Refusal to approve project or record plat forbidden.
- 55-1524. Application of local zoning ordinances.
- 55-1525. "Blue Sky Law" inapplicable.
- 55-1526. Legal description that designated on plat or in declaration.
- 55-1527. Zoning laws applied where not inconsistent.

55-1501. Short title. — This act shall be known and may be cited as the "Condominium Property Act."

History.

1965, ch. 225, § 1, p. 515.

STATUTORY NOTES**Compiler's Notes.**

The term "this act" refers to S.L. 1965, ch.

225 which is compiled as §§ 55-1501 to 55-1527.

JUDICIAL DECISIONS

Cited in: Fairway Dev. Co. v. Bannock County, 113 Idaho 933, 750 P.2d 954 (1988).

RESEARCH REFERENCES

Am. Jur. — 15B Am. Jur. 2d, Condominiums and Cooperative Apartments, § 1 et seq.

C.J.S. — 31 C.J.S., Estates, § 232 et seq.

A.L.R. — Erection of condominium as violation of restrictive covenant forbidding erection of apartment houses. 65 A.L.R.3d 1212.

Adequacy and application of guidelines relating to condominium association's requisite approval of individual unit of owner's im-

provements or decorations. 25 A.L.R.4th 1059.

Validity and construction of condominium bylaws or regulations placing special regulations, burdens, or restrictions on nonresident owners. 76 A.L.R.4th 295.

Property taxation of residential time-share or interval-ownership units. 80 A.L.R.4th 950.

55-1502. Purpose — Public policy. — Whereas, the availability of more adequate financing for construction, land development and improve-

ment, and business expansion is beneficial and advantageous to the development of the state of Idaho and in the public interest, and, whereas, the condominium estate is a concept of holding property, which concept should be clarified in the state of Idaho to permit and facilitate the construction and development of condominiums and condominium projects, together with the financing of the same;

Now, therefore, the condominium estate in property is hereby declared to be a lawful estate in property and consistent with the public policy of the state of Idaho.

History.

1965, ch. 225, § 2, p. 515.

JUDICIAL DECISIONS

Assessment.

A developer's filing of a declaration of condominium for the apartment complex triggered a new classification of its property, a discrete classification which rendered adjusted assessment on the basis of the altered classification constitutionally valid. *Fairway*

Dev. Co. v. Bannock County, 113 Idaho 933, 750 P.2d 954 (1988).

Cited in: *Investors Ltd. v. Sun Mt. Condominiums Phase I, Inc.*, 106 Idaho 855, 683 P.2d 891 (Ct. App. 1984).

RESEARCH REFERENCES

Am. Jur. — 15B Am. Jur. 2d, Condominiums and Cooperative Apartments, § 1 et seq.

C.J.S. — 31 C.J.S., Estates, § 232 et seq.

55-1503. Definitions. — As used in this act unless the context otherwise requires:

(a) "Condominium" means an estate in property as defined in section 55-101B, Idaho Code, as amended.

(b) "Project" means the entirety of the property divided or to be divided into condominiums.

(c) "Property" means the land described in the declaration recorded pursuant to section 55-1505, together with every building, improvement or structure thereon, and every easement or right appurtenant thereto, and all personal property intended for use in connection therewith or for the use, benefit or enjoyment of the condominium owners.

(d) "Unit" means the separate interest in a condominium.

(e) "Common area" means the entire project excepting all units.

(f) "Management body" means any person or persons managing a project, and includes the condominium owners acting themselves, a corporation or association of which the owners are members or stockholders, a board of governors or directors elected by the owners, or a management agent selected by the owners, by the corporation or association, or by the board, or named in the declaration.

(g) "Limited common areas" mean those common areas and facilities designated in the declaration for use of a certain condominium owner or owners to the exclusion, limitation or restriction of others.

(h) "Person" means any individual or any corporation, joint venture,

limited partnership, partnership, firm, association, trustee or other similar entity or organization.

History.

1965, ch. 225, § 3, p. 515.

STATUTORY NOTES**Compiler's Notes.**

The term "this act" refers to S.L. 1965, ch.

225 which is compiled as §§ 55-1501 to 55-1527.

JUDICIAL DECISIONS

Cited in: *Investors Ltd. v. Sun Mt. Condominiums, Phase I, Inc.*, 106 Idaho 855, 683 P.2d 891 (Ct. App. 1984).

RESEARCH REFERENCES

Am. Jur. — 15B Am. Jur. 2d, Condominiums and Cooperative Apartments, § 1.

C.J.S. — 31 C.J.S., Estates, § 232 et seq.

55-1504. Requirements to qualify. — The requirements of this act shall apply to condominiums only (a) if there shall be recorded in the county in which such condominiums are located or to be located a declaration, as provided in this act, together with a plat or plats, and (b) if said documents, or either of them, contain an expression of intent to create a project which is subject to the provisions of this act, and (c) if at least one (1) of such documents contains:

(i) a plat or survey map of the surface of the ground included within the project,

(ii) diagrammatic floor plans of the building or buildings built or to be built thereon in sufficient detail to identify each unit, its relative location and approximate dimensions, showing elevations where multi-level or multi-story structures are diagrammed, and

(iii) a certificate consenting to the recordation of such documents pursuant to this act, executed and acknowledged by the record owner and the holder of any recorded security interest in such property. A condominium project is created if there has been substantial compliance in good faith with the provisions of this section.

The declaration and the plat or plats may, prior to the first sale of a condominium, be amended or revoked by a subsequently recorded instrument executed and acknowledged by the then record owner and the then holder of any recorded security interest in such property. Until such recordation of such a revocation, the provisions of this act shall continue to apply to such property. The term "record owner" as used in this section means the owner or owners of the property; or, in the case of property held under a recorded lease, the lessee; or, in the case of property held under a recorded sublease of such a lease, the sublessee; or, in the case of property held under a recorded assignment of such a lease or such a sublease, the assignee, but does not include holders or owners of unrecorded interests, or mineral interests, of easements or of rights of way.

History.

1965, ch. 225, § 4, p. 515.

STATUTORY NOTES**Compiler's Notes.**

The term "this act" refers to S.L. 1965, ch. 225 which is compiled as §§ 55-1501 to 55-1527.

JUDICIAL DECISIONS**ANALYSIS**

Applicability.

Control by developer.

Default judgment.

Applicability.

Reliance by owners and building associations on the condominium property act for the proposition that they were entitled to fee simple ownership of certain disputed properties was misplaced because the covenants, conditions, and restrictions for the development recorded by the original owner and developer did not reference the act; additionally, no plat was recorded, so any development could not have qualified under this section, which requires recording of a declaration and a plat. *West Wood Invs. v. Acord*, 141 Idaho 75, 106 P.3d 401 (2005).

Control by Developer.

The Idaho law governing development and sales of condominiums does not prohibit or

restrict the developer from retaining control over the managing body of condominium owners by reason of the developer's ownership of built but unsold units; the Idaho act is simply silent on the subject. *Investors Ltd. v. Sun Mt. Condominiums, Phase I, Inc.*, 106 Idaho 855, 683 P.2d 891 (Ct. App. 1984).

Default Judgment.

The trial court's decision refusing to set aside a default judgment was not clearly erroneous where defendant in a real property dispute was not a lienholder of record and, thus, defendant's signature was not required upon the amended master condominium declarations. *McFarland v. Curtis*, 123 Idaho 931, 854 P.2d 274 (Ct. App. 1993).

RESEARCH REFERENCES

Am. Jur. — 15B Am. Jur. 2d, Condominiums and Cooperative Apartments, § 1 et seq.

C.J.S. — 31 C.J.S., Estates, § 232 et seq.

55-1505. Contents of declaration. — (1) The declaration shall contain the following:

(a) A legal description of the surface of the ground within the project.

(b) A legal description of each unit in the project, which description may consist of the identifying number, symbol or name of such unit as shown on the plat.

(c) The percentage of ownership interest in the common area which is to be allocated to each unit for purposes of tax assessment under section 55-1514, Idaho Code, and for purposes of liability as provided by section 55-1515, Idaho Code. Such percentage shall be fixed by taking as a basis the value of each unit in relation to the value of the property as a whole. For said purposes, the percentage so fixed shall be conclusive, subject only to clear and convincing proof of bad faith at the time of and in the making of such allocation or the last prior amendment thereof. If a substantial change is made to the value or size of one (1) or more units as compared with other units, upon petition by a unit owner for reevaluation and allocation of percentage of ownership interest, the allocation shall be

amended. Reallocation shall not occur more frequently than every three (3) years. If the board of managers fails to act, reallocation may be accomplished by court action. If court action is necessary the prevailing party may be awarded attorney's fees and costs for unreasonable pursuit or refusal.

(2) The declaration may but need not also contain any of the following:

(a) A description of the buildings in the project, stating the number of stories and basements, the number of units and the principal materials of which they are or are to be constructed.

(b) A statement of the location of each unit, its approximate area, number of rooms, and immediate common area to which it has access, and any other data for its proper identification.

(c) A description of the common areas and facilities.

(d) A description of any limited common areas and facilities, if any, stating to which units their use is reserved or the terms of applicable restrictions or limitations.

(e) The value of the property and of each unit.

(f) A statement of the purposes for which the building and each of the units are intended and restricted as to use.

(g) Provisions as to the percentage of votes by the condominium owners which shall be determinative of whether to rebuild, repair, restore, or sell the property in the event of damage, taking, or destruction of all or part of the property.

(h) Any or all of the provisions hereinafter referred to in section 55-1507, Idaho Code, as proper provisions of bylaws.

(i) Provisions for the management of the project by any management body or bodies; for the voting majorities, quorums, notices, meeting dates, and other rules governing such body or bodies; and for recordation, from time to time, as provided for in the declaration, of certificates of identity of the persons then composing such management body or bodies, which certificates shall be conclusive evidence of the facts recited therein in favor of any person relying thereon in good faith.

(j) As to any management body:

(1) For the powers thereof, including power to enforce the provisions of the declaration;

(2) For maintenance by it of fire, casualty, liability, worker's compensation and other insurance and for bonding of the members of any management body;

(3) For provision by it of and payment by it for maintenance, utility, gardening and other services; for employment of personnel necessary for operation of the project, and legal and accounting services;

(4) For purchase by it of materials, supplies and the like and for maintenance and repair of the project;

(5) For payment by it of taxes and special assessments which would be a lien upon the entire project or common areas, and for discharge by it of any lien or encumbrance levies against the entire project or common areas;

(6) For payment by it for reconstruction of any portion or portions of the project damaged, taken or destroyed;

- (7) For delegation by it of its powers;
- (8) For entry by it or its agents into any unit when necessary in connection with any maintenance or construction for which the management body is responsible;
- (9) For an irrevocable power of attorney to the management body to sell and convey the entire project for the benefit of all of the owners thereof when partition of the project may be had under section 55-1511, Idaho Code, which power shall: (i) be binding upon all of the owners, whether they expressly assume the obligations of the declaration or not; (ii) if so provided in the declaration, be exercisable by less than all (but not less than fifty percent (50%)) of the voting power of the owners in the project; (iii) be exercisable only after recordation of a certificate by those who have the right to exercise such power of attorney that such power of attorney is properly exercisable under the declaration, which certificate shall be conclusive evidence of the facts recited therein in favor of any person relying thereon in good faith.
- (k) Provisions for amendments of such declaration or the bylaws, if any, which amendments, if made upon the vote or consent of more than fifty percent (50%) of the voting power of the owners in the project, shall be binding upon every owner and every condominium whether the burdens thereon are increased or decreased thereby, and whether or not the owner of each and every condominium consents thereto.
- (l) Provisions for independent audit of the accounts of any management body.
- (m)(1) Provisions for assessments to meet authorized expenditures of any management body, and for a method for notice and levy thereof, each condominium to be assessed separately for its share of such expenses in proportion (unless otherwise provided) to its owner's fractional interest in the common areas;
- (2) For the subordination of the liens securing such assessments to other liens either generally or specifically described.
- (n) Provisions for the conditions upon which partition of the project may be had pursuant to this act. Such right to partition may be conditioned upon failure of the condominium owners to elect to rebuild within a certain period, specified inadequacy of insurance proceeds, specified damage to the building, a decision of an arbitrator, or upon any other condition.
- (o) Provisions for restrictions upon the severability of the component interests in the property which comprise a condominium. Such restrictions shall not be deemed conditions repugnant to the interest created nor unlawful restraints on alienation.
- (p) Such document, agreement or writing pertinent to the project or its financing as may be attached to, incorporated in or made an exhibit to the declaration and/or any bylaws.
- (q) Such other provisions not inconsistent with this act as the owner or owners may deem desirable in order to promote, facilitate or preserve the property or the project or the use, development or administration thereof.
- (3) Subpart (2) of this section shall not be construed as a limitation upon permissible contents and provisions of a declaration.

History.

1965, ch. 225, § 5, p. 515; am. 2002, ch. 78, § 1, p. 175.

STATUTORY NOTES**Compiler's Notes.**

The term "this act" refers to S.L. 1965, ch. 225 which is compiled as §§ 55-1501 to 55-1527.

The words in parentheses so appeared in the law as enacted.

JUDICIAL DECISIONS**ANALYSIS**

Amendment of declaration and plats.
Control by developer.
Master deed.

Amendment of Declaration and Plats.

After the first sale of a condominium, the declaration and plats can be amended only if the proposed amendment is consented to by the requisite percentage of the voting power of the owners of the project, always more than 50 percent, as specified in the declaration. *Investors Ltd. v. Sun Mt. Condominiums, Phase I, Inc.*, 106 Idaho 855, 683 P.2d 891 (Ct. App. 1984).

Control by Developer.

The Idaho law governing development and sales of condominiums does not prohibit or restrict the developer from retaining control over the managing body of condominium own-

ers by reason of the developer's ownership of built but unsold units; the Idaho act is simply silent on the subject. *Investors Ltd. v. Sun Mt. Condominiums, Phase I, Inc.*, 106 Idaho 855, 683 P.2d 891 (Ct. App. 1984).

Master Deed.

The declaration which must be filed to create a condominium project is essentially a master deed which defines the rights and duties of the developer, the owners of the individual condominium units, and the management body of the project. *Investors Ltd. v. Sun Mt. Condominiums, Phase I, Inc.*, 106 Idaho 855, 683 P.2d 891 (Ct. App. 1984).

RESEARCH REFERENCES

Am. Jur. — 15B Am. Jur. 2d, Condominiums and Cooperative Apartments, §§ 7 to 10.

C.J.S. — 31 C.J.S., Estates, § 232 et seq.

A.L.R. — Validity and construction of con-

dominium association's regulations governing members' use of common facilities. 72 A.L.R.3d 308.

55-1506. Administration — By-laws — Articles of incorporation — Recordation required to modify or amend. — Except when a domestic corporation has been formed and is designated in the declaration to serve as a management body and to administer the project, the administration of every project shall be governed by by-laws, which may either be embodied in the declaration or in a separate instrument which shall be recorded with the declaration. When a domestic corporation is so formed and designated the owner or owners shall append to and record with the declaration a certified copy of its articles of incorporation from which it must appear (a) that the purpose for which such corporation was formed and its powers are consistent with the provisions of this act and (b) that the members or stockholders of the corporation must be and remain owners of condominiums within the said project and include all owners of condominiums within the project. When a corporate organization is so utilized, the administration of the project need not be governed by by-law provisions

hereinafter set forth but shall be subject to the law of corporations. No modification or amendment of the declaration, of such articles or of recorded by-laws shall be effective until the same is recorded in the county where the original document was first recorded.

History.

1965, ch. 225, § 6, p. 515.

STATUTORY NOTES

Compiler's Notes.

The term "this act" refers to S.L. 1965, ch.

225 which is compiled as §§ 55-1501 to 55-1527.

RESEARCH REFERENCES

Am. Jur. — 15B Am. Jur. 2d, Condominiums and Cooperative Apartments, § 11 et seq.

C.J.S. — 31 C.J.S., Estates, § 232 et seq.

55-1507. Contents of by-laws. — The by-laws referred to in section 55-1506[, Idaho Code], when required, shall provide for at least the following:

(a) The election from among the unit owners of a board of managers, the number of persons constituting such board, and that the terms of at least one third (1/3) of the members of the board shall expire annually; the powers and duties of the board; the compensation, if any, of the members of the board; the method of removal from office of members of the board; and whether or not the board may engage the services of a manager or managing agent.

(b) Method of calling meetings of the unit owners; what percentage of the unit owners, if other than a majority, shall constitute a quorum.

(c) Election of a president from among the board of managers, who shall preside over the meetings of the board of managers and of the unit owners.

(d) Election of a secretary, who shall keep the minutes of all meetings of the board of managers and of the unit owners and who shall, in general, perform all the duties incident to the office of secretary.

(e) Election of a treasurer, who shall keep the financial records and books of account.

(f) Maintenance, repair and replacement of the common elements and payments therefor, including the method of approving payment vouchers.

(g) Method of estimating the amount of the annual budget, and the manner of assessing and collecting from the unit owners their respective shares of such estimated expenses, and of any other expenses lawfully agreed upon.

(h) That upon 10 days' notice to the manager or board of managers and payment of a reasonable fee, any unit owner shall be furnished a statement of his account setting forth the amount of any unpaid assessments or other charges due and owing from such owner.

(i) Designation and removal of personnel necessary for the maintenance, repair and replacement of the common elements.

(j) Such restrictions on and requirements respecting the use and main-

tenance of the units and the use of the common elements, not set forth in the declaration, as are designed to prevent unreasonable interference with the use of their respective units and of the common elements by the several unit owners.

(k) Method of adopting and of amending administrative rules and regulations governing the operation and use of the common elements.

(l) The percentage of votes required to modify or amend the by-laws, but each one of the particulars set forth in this section shall always be embodied in the by-laws.

History.

1965, ch. 225, § 7, p. 515.

STATUTORY NOTES

Compiler's Notes.

The bracketed insertion in the introductory

paragraph was added by the compiler to conform to the statutory citation style.

RESEARCH REFERENCES

Am. Jur. — 15B Am. Jur. 2d, Condominiums and Cooperative Apartments, §§ 11, 12.

C.J.S. — 31 C.J.S., Estates, § 232 et seq.

55-1508. Recordation of instruments affecting project. — The declaration, plat or plats, deeds, by-laws, administrative provisions, articles of incorporation as provided in section 55-1506[, Idaho Code], any instrument by which the provisions of this act may be waived, and every instrument affecting the project or any condominium, and any amendment or amendments to such documents, shall be entitled to be recorded by the county recorder in the county or counties where the project is located, and such official shall accept the same for recordation when requested to do so.

History.

1965, ch. 225, § 8, p. 515.

STATUTORY NOTES

Cross References.

County recorder, § 31-2401 et seq.

225 which is compiled as §§ 55-1501 to 55-1527.

Compiler's Notes.

The term "this act" refers to S.L. 1965, ch.

The bracketed insertion in this section was added by the compiler to conform to the statutory citation style.

RESEARCH REFERENCES

Am. Jur. — 15B Am. Jur. 2d, Condominiums and Cooperative Apartments, § 10.

C.J.S. — 31 C.J.S., Estates, § 232 et seq.

55-1509. Grant — Physical boundaries of units — Incidents excluded — Common areas — Decorating rights of owner. — Unless otherwise expressly provided in the declaration, deeds, plat or plats, the incidents of a condominium grant are as follows:

(a) The physical boundaries of the unit are the interior surfaces of the

perimeter walls, floors, ceilings, windows and doors thereof, and the unit includes both the portions of the building so described and the airspace so encompassed. The following are not part of the unit: bearing walls, columns, floors, roofs, foundations, elevator equipment and shafts, central heating, central refrigeration and central air-conditioning equipment, reservoirs, tanks, pumps and other central services, pipes, ducts, flues, chutes, conduits, wires and other utility installations, wherever located, except the outlets thereof when located within the unit. In interpreting the declaration, plat or plats, and deeds, the existing physical boundaries of the unit as originally constructed or as reconstructed in lieu thereof shall be conclusively presumed to be its boundaries rather than the metes and bounds expressed or depicted in the declaration, plat or plats, or deed, regardless of settling or lateral movement of the building and regardless of minor variance between boundaries shown in the declaration, plat or plats, or deed, and the actual boundaries of units in the building.

(b) The common areas are owned by the owners of the condominiums as their interests appear and are set forth in the declaration pursuant to section 55-1505(1)(c)[, Idaho Code].

(c) A nonexclusive right of ingress, egress and support through the common areas is appurtenant to each unit and the common areas are subject to such rights.

(d) Each condominium owner shall have the exclusive right to paint, repaint, tile, wax, paper or otherwise maintain, refinish, and decorate the inner surfaces of the walls, ceilings, floors, windows and doors bounding his own unit, and the interior thereof.

History.

1965, ch. 225, § 9, p. 515.

STATUTORY NOTES

Compiler's Notes.

The bracketed insertion in subsection (b)

was added by the compiler to conform to the statutory citation style.

RESEARCH REFERENCES

Am. Jur. — 15B Am. Jur. 2d, Condominiums and Cooperative Apartments, § 36.

C.J.S. — 31 C.J.S., Estates, § 232 et seq.

55-1510. Removal of property from law — Common ownership — Resubmission. — Unless otherwise provided in the declaration, a project may be removed from the provisions of this act by a vote or written consent of the condominium owners owning at least a two-thirds (2/3) interest in the common areas as percentages of interest are allocated pursuant to section 55-1505(1)(c)[, Idaho Code], and by filing for record in the county where the project is located a written instrument signed and acknowledged by such owners wherein it is stated that such described project is so withdrawn, provided, holders of all liens affecting any of the units or the common must consent or agree thereto in writing by recorded written instrument in which event their liens shall be deemed forthwith, and without change of seniority,

transferred (a) to the former condominium owner's undivided interest in the property as hereinafter provided if such lien was upon a condominium, and (b) upon the entire property if the lien was specifically upon the common areas or the project as a whole and not upon any particular condominium or condominiums; provided further, however, nothing herein contained shall be construed to restrict the right to limit, prohibit or make other provisions respecting withdrawal from this act by provision in the declaration.

Upon such removal under this section the property shall be deemed to be owned in common and each former condominium owner shall have an exclusive right to the occupancy of what formerly was his unit. Removal of a project from the provisions of this act shall in no way bar the subsequent resubmission of the property to the provisions of this act.

History.

1965, ch. 225, § 10, p. 515.

STATUTORY NOTES

Compiler's Notes.

The term "this act" refers to S.L. 1965, ch. 225 which is compiled as §§ 55-1501 to 55-1527.

The bracketed insertion in the first sentence was added by the compiler to conform to the statutory citation style.

55-1511. Partition — Sale. — (a) Where two (2) or more persons own condominiums in a project an action may be brought by one (1) or more of such persons for the partition of the interests comprising the project, as if the owners of all of the condominiums in such project were tenants in common in the entire project in the proportion provided for in the declaration, deeds, or plat or plats entered into with respect to such project, or, in the absence of such provision, in the same proportion as their interests in the common areas of such project; provided, however, that a partition shall be made only upon the showing that:

- (1) Three (3) years after the damage to, or destruction or taking of, a material part of the project which renders the project unfit for the use to which it was put prior to such damage, destruction or taking, the project has not been rebuilt, repaired or replaced in a manner which substantially permits such use of the project, or
- (2) Three-fourths (3/4) or more of the project has been destroyed, taken, or substantially damaged, and that persons entitled to cast fifty per cent (50%) of the votes to determine whether or not the project shall be repaired, restored or replaced are opposed to such repair, restoration or replacement, or
- (3) More than fifty (50) years have elapsed since the first conveyance of a condominium in the project, and that the project is uneconomic or otherwise obsolete, and that persons entitled to cast fifty per cent (50%) of the votes to determine whether or not the project shall be repaired, restored or replaced are opposed to such repair, restoration or replacement, or
- (4) That conditions for such a partition provided for in the deed, declaration, plat or plats entered into with respect to such project have been

met, whether such conditions be more or less restrictive than the conditions set forth in this section.

(b) The entire project or a part thereof may be sold if it appears that a physical partition cannot be made without prejudice to the respective rights of the persons' interests therein.

(c) Nothing herein shall be deemed to prevent partition of a condominium as between two (2) or more persons having interests therein.

History.

1965, ch. 225, § 11, p. 515.

RESEARCH REFERENCES

Am. Jur. — 15B Am. Jur. 2d, Condominiums and Cooperative Apartments, §§ 46, 47.

55-1512. Actions relating to common areas — Persons designated to receive process — New designation filed — Service on auditor — Copy from auditor to management body — Application of corporate law. — Except when a domestic corporation has been formed and designated in the declaration to serve as the management body to administer the project, at the time the declaration is recorded one (1) or more persons shall be designated to receive service of process in any action relating to the common areas and facilities. Such designation shall be filed with the county auditor in the county in which the project is located together with an acknowledgment in writing of acceptance of such designation by the person so designated. The person so designated shall be a resident of the state of Idaho, and service upon such person shall be the exclusive method of service in any action relating to the common areas and facilities. Upon termination of such person's capacity or authority to receive service, a new designation shall be made by the management body of the project, and such designation shall be filed with the county auditor in the county in which the project is located together with an acknowledgment in writing of acceptance of such designation by the person so designated. Upon failure to so designate a person to receive service of process and to file such designation and acceptance of such designation, service may be made upon the county auditor with like effect as though said service were made upon a person designated, and it shall be the duty of the county auditor to forward a copy of such summons served on him by registered mail to the management body of the project at the address or location last known, but no failure on the part of the county auditor to mail such copy of summons shall affect the validity of the service thereof. When a corporate organization is formed and designated as the management body, service of process on the corporation shall be as permitted by law, and the Idaho rules of civil procedure.

History.

1965, ch. 225, § 12, p. 515; am. 2005, ch. 110, § 1, p. 362.

STATUTORY NOTES

Cross References.

County auditor, § 31-2301 et seq.

RESEARCH REFERENCES

Am. Jur. — 15B Am. Jur. 2d, Condominiums and Cooperative Apartments, §§ 56 to 61.

C.J.S. — 31 C.J.S., Estates, § 232 et seq.

A.L.R. — Liability of condominium association or corporation for injury allegedly

caused by condition of premises. 45 A.L.R.3d 1171.

Self-dealing by developers of condominium project as affecting contracts or leases with condominium association. 73 A.L.R.3d 613.

55-1513. Actions by management on behalf of two or more owners. — Without limiting the rights of any condominium owner, actions may be brought by the management body on behalf of two (2) or more of the condominium owners with respect to any cause of action relating to the common areas or more than one (1) unit.

History.

1965, ch. 225, § 13, p. 515.

RESEARCH REFERENCES

Am. Jur. — 15B Am. Jur. 2d, Condominiums and Cooperative Apartments, §§ 50 to 55.

A.L.R. — Proper party plaintiff in action for injury to common areas of condominium development. 69 A.L.R.3d 1148.

55-1514. Separate taxation — Lien — Tax deed. — Notwithstanding any contrary or inconsistent provision of the Idaho Code or of this act, property taxes, assessments, special assessments, and all special taxes or charges of the state of Idaho or of any political subdivision thereof, or other lawful taxing or assessing body, which are authorized by law to be assessed against or levied upon real or personal property shall be assessed against and levied upon each condominium and not upon the group of condominiums as a whole, and such tax, assessment or charge on each such condominium shall constitute a lien solely thereon.

A person acquiring or entitled to the issuance of a tax deed conveying the interest of any condominium owner, shall acquire only an interest subject to such provisions of this act as may be applicable, and subject to all lawful terms, provisions, covenants, conditions, and limitations which may apply thereto and appear in any recorded declaration, plat, deed or by-laws then in force and affecting such interest.

History.

1965, ch. 225, § 14, p. 515.

STATUTORY NOTES

Compiler's Notes.

The term "this act" refers to S.L. 1965, ch.

225 which is compiled as §§ 55-1501 to 55-1527.

RESEARCH REFERENCES

Am. Jur. — 15B Am. Jur. 2d, Condominiums and Cooperative Apartments, §§ 44, 45.

A.L.R. — Real estate taxation of condominiums. 71 A.L.R.3d 952.

55-1515. Owners proportionately liable for common areas — Remaining balance not prejudiced by settlement — Indemnification. — Each condominium owner's liability for claims, judgments or awards arising out of or in connection with the ownership, use, operation or management of the common areas, is limited to a proportionate sum which equals the amount of any such claim, judgment or award multiplied by the percentage interest in the common areas allocated to such ownership by the declaration as provided in section 55-1505(1)(c). In any suit to establish liability for claims, judgments or awards arising out of or in connection with the ownership, use, operation or management of the common areas there shall be introduced no evidence as to the percentage interest in the common area of any condominium owner until and unless such fact becomes material and liability is fixed by judgment or agreed upon in writing signed by all affected parties to the litigation and filed with the court. Any condominium owner may compromise or settle his portion of any such claim without prejudice to the remaining balance thereof and without the same constituting evidence or an admission for or against any such claimant.

The provisions of this section shall not alter or affect the respective rights and obligations of condominium owners to or between one another to the extent that one or more may have any legal right arising from contract, statute, or the common law to be wholly or partially indemnified by one or more other persons who are likewise owners of condominiums within the same said project.

History.

1965, ch. 225, § 15, p. 515.

RESEARCH REFERENCES

A.L.R. — Liability of condominium association or corporation for injury allegedly caused by condition of premises. 45 A.L.R.3d 1171.

Proper party plaintiff in action for injury to common areas of condominium development. 69 A.L.R.3d 1148.

Personal liability of owner of condominium unit to one sustaining personal injuries or property damage by condition of common areas. 39 A.L.R.4th 98.

55-1516. Liability of unit owners, tenants, employees — Duties and powers of owners. — All condominium owners, tenants of such owners, employees of owners and tenants, or any other persons that may in any manner use property or any part thereof submitted to the provisions of this act shall be subject to this act and to the declaration and by-laws of the project adopted pursuant to the provisions of this act.

All agreements, decisions and determinations lawfully made by the management body shall be deemed to be binding on all condominium owners and shall inure to the benefit of all such owners.

Each condominium owner and any group of owners shall have standing and authority, unless otherwise provided, to enforce the provisions of the declaration and any recorded by-laws of the project.

History.

1965, ch. 225, § 16, p. 515.

STATUTORY NOTES

Compiler's Notes.

The term "this act" refers to S.L. 1965, ch.

225 which is compiled as §§ 55-1501 to 55-1527.

RESEARCH REFERENCES

Am. Jur. — 15B Am. Jur. 2d, Condominiums and Cooperative Apartments, §§ 21 to 25.

55-1517. Insurance of individual units by management body. — The management body, if required by the declaration, by-laws or otherwise, or at the request of a mortgagee or a beneficiary of a deed of trust having a first mortgage or first deed of trust of record covering a unit or any part of the project, shall have the authority and an insurable interest to insure the project or any portion thereof against loss or damage by fire or other hazard or casualty. Such insurance coverage may be written in the name of the management body, as trustee for each of the condominium owners in the percentages established in the declaration or as otherwise provided in the declaration or provided by the management body, and premiums may be treated as common expenses. Provision for such insurance shall be without prejudice to the right of each condominium owner to insure his own unit for his own benefit. This provision shall not be construed to limit the power of such body to secure and maintain other insurance coverage or to treat the cost thereof as a common expense.

History.

1965, ch. 225, § 17, p. 515.

RESEARCH REFERENCES

Am. Jur. — 15B Am. Jur. 2d, Condominiums and Cooperative Apartments, § 24.

55-1518. Assessment and other charges a lien — Notice recorded — Payment and release — Priority of liens — Expiration — Extension — Enforcement by sale — Purchase by management body. — An assessment upon any condominium made in accordance with the declaration, any recorded by-laws, or any duly promulgated project regulation, shall be a debt of the owner thereof at the time the assessment is made. The amount of any such assessment, together with those other charges thereon, such as interest, costs (including attorney's fees), and penalties, which may be provided for in the declaration, shall be and become a lien upon the condominium assessed when the management body causes to be recorded

with the county recorder of the county in which such condominium is located a notice of assessment, which shall state the amount of such assessment and such other charges thereon as may be authorized by the declaration, a description of the condominium against which the same has been assessed, and the name of the record owner thereof. Such notice shall be signed by an authorized representative of the management body or as otherwise provided in the declaration. Upon payment of said assessment and charges in connection with which such notice has been so recorded, or other satisfaction thereof, the management body shall cause to be recorded a further notice stating the satisfaction and the release of the lien thereof.

Such lien shall be prior to all other liens filed or recorded subsequent to the recordation of said notice of assessment except that the declaration may provide for the subordination thereof to other liens either generally or specifically described and except further that labor or materialmen's liens arising under the law of Idaho and timely and duly filed shall have priority if the date fixed by statute for such lien to arise is prior to recording as provided in this section. Unless sooner satisfied and released or the enforcement thereof initiated as hereafter provided such lien shall expire and be of no further force or effect one (1) year from the date of recordation of said notice of assessment; provided, however, that said one-year period may be extended by the management body for not to exceed one (1) additional year by recording a written extension thereof.

Such lien may be enforced by sale by the management body, its attorney or other person authorized to make the sale, after failure of the owner to pay such an assessment in accordance with its terms, such sale to be conducted in the manner permitted by law for the exercise of powers of sale in deeds of trust or any other manner permitted by law. Unless otherwise provided in the declaration the management body shall have the power to purchase the condominium at foreclosure sale and to hold, lease, encumber and convey the same.

History.

1965, ch. 225, § 18, p. 515.

STATUTORY NOTES**Cross References.**

Deeds of trust, § 45-1502 et seq.

Compiler's Notes.

The words enclosed in parentheses so appeared in the law as enacted.

RESEARCH REFERENCES

Am. Jur. — 15B Am. Jur. 2d, Condominiums and Cooperative Apartments, §§ 31 to 35.

A.L.R. — Expenses for which condominium association may assess unit owners. 77 A.L.R.3d 1290.

55-1519. Liens for labor, services or materials — Express consent — Emergency repairs — Proportionate payment for removal of lien. — No labor performed or services or materials furnished with the consent of or at the request of a condominium owner or his agent or his contractor or subcontractor shall be the basis for the filing of a lien against the condominium of any other condominium owner, or against any part thereof, or against any other property of any other condominium owner, unless such other owner has expressly consented to or requested the performance of such labor or furnishing of such materials or services. Such express consent shall be deemed to have been given by the owner of any condominium in the case of emergency repairs thereto. Labor performed or services or materials furnished for the project, if duly authorized by the management body, shall be deemed to be performed or furnished with the express consent of each condominium owner. The owner of any condominium may remove his condominium from a lien against two (2) or more condominiums or any part thereof by payment to the holder of the lien of the fraction of the total sum secured by such lien which is attributable to his condominium.

History.

1965, ch. 225, § 19, p. 515.

RESEARCH REFERENCES

Am. Jur. — 15B Am. Jur. 2d, Condominiums and Cooperative Apartments, §§ 50, 51.

55-1520. Personal property acquired, held and disposed of by management body — Beneficial interest proportionate — Transfer. — Unless otherwise provided for in a declaration recorded pursuant to section 55-1505[, Idaho Code], a management body may acquire and hold, for the benefit of the condominium owners, tangible and intangible personal property and may dispose of the same by sale or otherwise; the beneficial interest in such personal property shall be owned by the condominium owners in the same proportion as their respective interests in the common areas, and shall not be transferable by such owners except with a transfer of a condominium. A transfer of a condominium shall transfer to the transferee ownership of the transferor's beneficial interest in such personal property.

History.

1965, ch. 225, § 20, p. 515.

STATUTORY NOTES

Cross References.

"Personal property" defined, § 55-102.

tence was added by the compiler to conform to the statutory citation style.

Compiler's Notes.

The bracketed insertion in the first sen-

RESEARCH REFERENCES

Am. Jur. — 15B Am. Jur. 2d, Condominiums and Cooperative Apartments, § 21 et seq.

55-1521. Liberal construction of deeds, declarations or plans for condominium projects. — Any deed, declaration or plan for a condominium project shall be liberally construed to facilitate the operation of the project, and provisions thereof shall be presumed to be independent and severable.

History.

1965, ch. 225, § 21, p. 515.

55-1522. Rule against perpetuities and unreasonable restraints on alienation inapplicable. — It is expressly provided that the rule of property known as the rule against perpetuities and the rule of property known as the rule restricting unreasonable restraints on alienation shall not be applied to defeat any of the provisions of this act or any condition, conveyance or inheritance consistent herewith.

History.

1965, ch. 225, § 22, p. 515.

STATUTORY NOTES

Cross References.

Limitation on successive life estates, § 55-203.

Rule in Shelley's case abolished, § 55-206.

Suspension of power of alienation, § 55-111A.

Compiler's Notes.

The term "this act" refers to S.L. 1965, ch. 225 which is compiled as §§ 55-1501 to 55-1527.

RESEARCH REFERENCES

Am. Jur. — 15B Am. Jur. 2d, Condominiums and Cooperative Apartments, §§ 36 to 41.

55-1523. Refusal to approve project or record plat forbidden. — No city council, board of trustees, or other governing body of the county, town, village or city in which a project is created pursuant to this act shall have the right to refuse acceptance or approval of nor may any county refuse for recordation a plat or plats prepared pursuant to this act solely because a project is or condominiums are thereby created.

History.

1965, ch. 225, § 23, p. 515.

STATUTORY NOTES

Compiler's Notes.

The term "this act" refers to S.L. 1965, ch.

225 which is compiled as §§ 55-1501 to 55-1527.

55-1524. Application of local zoning ordinances. — Unless a contrary intent is clearly expressed in local zoning ordinances, such ordinances shall be construed to treat like structures, lots, or parcels in like manner regardless of whether the ownership thereof is divided by sale of condominiums created in a project pursuant to this act, rather than by the lease or other disposition of such structures, lots or parcels on any part or parts thereof.

History.

1965, ch. 225, § 24, p. 515.

STATUTORY NOTES

Compiler's Notes.

The term "this act" refers to S.L. 1965, ch.

225 which is compiled as §§ 55-1501 to 55-

1527.

RESEARCH REFERENCES

A.L.R. — Zoning or building regulations as applied to condominiums. 71 A.L.R.3d 866.

55-1525. "Blue Sky Law" inapplicable. — The provisions of title 26, chapter 18, Idaho Code, shall not apply to the creation, issuance, sale, offer for sale, solicitation of an offer to buy, conveyance, transfer, or other disposition, or encumbrance or other hypothecation, or management, of condominiums or projects created pursuant to this act, or of evidences of membership in or ownership of or stock in any entity created solely to manage the affairs of a project, or to the negotiation or taking of subscriptions in respect of any of the foregoing.

History.

1965, ch. 225, § 25, p. 515.

STATUTORY NOTES

Compiler's Notes.

The Blue Sky Law, referred to in the section heading and formerly compiled as §§ 26-1801 to 26-1822, was repealed by S.L. 1967, ch. 394, § 59.

The term "this act" refers to S.L. 1965, ch.

225 which is compiled as §§ 55-1501 to 55-1527.

55-1526. Legal description that designated on plat or in declaration. — Every deed, contract of sale, lease, mortgage or other instrument may legally describe a condominium by its identifying number, symbol, name or other identification or designation as shown on the plat of record or as shown in the declaration, and every such description shall be deemed good and sufficient for all purposes.

History.

1965, ch. 225, § 26, p. 515.

55-1527. Zoning laws applied where not inconsistent. — Except where inconsistent with the provisions or purposes of this act, state and

local laws relating to plats, recording, subdivisions or zoning shall apply to condominiums and to projects as herein defined.

History.
1965, ch. 225, § 27, p. 515.

STATUTORY NOTES

Compiler's Notes.
The term "this act" refers to S.L. 1965, ch. 225 which is compiled as §§ 55-1501 to 55-1527.
Section 28 of S.L. 1965, ch. 225, read: "If any provision of this act or any section, sentence, clause, phrase or word, or the applica-

tion thereof in any circumstance, is held invalid, the validity of the remainder of the act and of the application of any such provision, section, sentence, clause, phrase or word in any other circumstances shall not be affected thereby."

RESEARCH REFERENCES

A.L.R. — Zoning or building regulations as applied to condominiums. 71 A.L.R.3d 866.

CHAPTER 16
CORNER PERPETUATION AND FILING

SECTION.
55-1601. Short title.
55-1602. Declaration of policy.
55-1603. Definitions.
55-1604. Filing requirements.
55-1605. Filing or recording.
55-1606. Filing or recording information.
55-1607. County clerk to keep record — Fees.
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SECTION.
surveyor or government agent.
55-1610. Preexisting records. [Repealed.]
55-1611. Federal government filings without fees.
55-1612. Penalty.
55-1613. Monuments disturbed by construction activities — Procedure — Requirements.

55-1601. Short title. — This chapter may be cited as the "Corner Perpetuation and Filing Law."

History.
1967, ch. 215, § 1, p. 647; am. 1993, ch. 206, § 1, p. 564.

JUDICIAL DECISIONS

Lost or Obliterated Corners.
Bureau of land management publications are not statutes and they may not be utilized to establish burdens of proof in real property disputes involving lost or obliterated corners. State ex rel. Evans v. Barnett, 116 Idaho 429, 776 P.2d 438 (1989).
In a dispute concerning the location of the section line forming the legal boundary between the land owned by the state and the adjoining property owners, the state had the initial burden of coming forward with evidence showing the original survey point of the

corner could not be determined and its location could be restored only by reference to adjacent corners. If this burden is met, the adjoining property owners, in order to sustain their contention that the corner is obliterated, must come forward with evidence showing although there are no remaining traces of the original monument, either the location has been perpetuated or the point may be recovered beyond reasonable doubt by other acceptable evidence. State ex rel. Evans v. Barnett, 114 Idaho 355, 757 P.2d 218 (Ct. App. 1988).

Where neither expert witness believed beyond a reasonable doubt that the place marked by a timber cruiser in or near the fence was an obliterated corner, the state met its burden of proving the corner was lost and

was properly restored through proportional measurements derived from the original surveyor's field notes. *State ex rel. Evans v. Barnett*, 114 Idaho 355, 757 P.2d 218 (Ct. App. 1988).

RESEARCH REFERENCES

Am. Jur. — 12 Am. Jur. 2d, Boundaries, § 1 et seq.

C.J.S. — 11 C.J.S., Boundaries, § 1 et seq.

55-1602. Declaration of policy. — It is the purpose of this chapter to protect and perpetuate public land survey corners and information concerning the location of such corners by requiring the systematic establishment of monuments and filing of information concerning the marking of the location of such public land survey corners and to allow the systematic location of other property corners, thereby providing for property security and a coherent system of property location and identification; and thereby eliminating the repeated necessity for reestablishment and relocations of such corners once they are established and located.

History.

1967, ch. 215, § 2, p. 647; am. 1993, ch. 206, § 2, p. 564.

STATUTORY NOTES

Cross References.

Board of licensure of professional engineers and professional land surveyors, § 54-1203.

55-1603. Definitions. — Except where the context indicates a different meaning, terms used in this chapter shall be defined as follows:

(1) "Accessory to a corner" means any exclusively identifiable physical object whose spatial relationship to the corner is recorded. Accessories may be bearing trees, bearing objects, monuments, reference points, line trees, pits, mounds, charcoal-filled bottles, steel or wooden stakes, or other objects.

(2) "Benchmark" means a material object, natural or artificial, whose elevation is referenced to an adopted datum.

(3) "Board" means the board of licensure of professional engineers and professional land surveyors.

(4) "Control survey" means a survey that provides horizontal or vertical position data for the support or control of subordinate surveys or for mapping.

(5) "Corner," unless otherwise defined, means a property corner, or a property controlling corner, or a public land survey corner, or any combination of these.

(6) "Establish" means to determine the position of a corner either physically or mathematically.

(7) "Monument" means a physical structure that occupies the exact position of a corner.

(8) “Professional land surveyor” means any person who is authorized by the laws of this state to practice land surveying.

(9) “Property controlling corner” for a property means a public land survey corner, property corner, reference point or witness corner that controls the location of one (1) or more of the property corners of the property in question.

(10) “Property corner” means a geographic point on the surface of the earth, and is on, a part of, and controls a property line.

(11) “Public land survey corner” means any point actually established and monumented in an original survey or resurvey that determines the boundaries of remaining public lands, or public lands patented, represented on an official plat and in the field notes thereof, accepted and approved under authority delegated by congress to the U.S. general land office and the U.S. department of interior, bureau of land management.

(12) “Reference point” means a special monumented point that does not occupy the same geographical position as the corner itself, and where the spatial relationship to the corner is recorded, and which serves to locate the corner.

(13) “Witness corner” means a monumented point on a lot line or boundary line of a survey, near a corner, and established in situations where it is impracticable to occupy or monument the corner.

History.
1967, ch. 215, § 3, p. 647; am. 1993, ch. 206,
§ 3, p. 564; am. 1997, ch. 190, § 13, p. 517;

am. 2008, ch. 378, § 27, p. 1046; am. 2011, ch.
136, § 13, p. 383.

STATUTORY NOTES

Amendments.
The 2008 amendment, by ch. 378, deleted subsection (2), which was the definition for “Adequate evidence of the existence of a land survey monument,” and redesignated the subsequent subsections accordingly; and in subsection (2), substituted “licensure” for “registration.”
The 2011 amendment, by ch. 136, in subsection (1), substituted “reference points” for “reference monuments”; added subsections (2) and (4) and redesignated the subsequent subsections accordingly; in subsection (9), substituted “property corner, reference point or witness corner that controls” for “or any property corner, which does not lie on a property line of the property in question, but which controls”; in subsection (12), substituted “Reference point” for “Reference monument,” “special monumented point” for “special monument” and “and where the spatial relationship to the corner is recorded, and which serves to locate the corner” for “but whose spatial relationship to the corner is recorded, and which serves to witness the corner”; and added subsection (13).

RESEARCH REFERENCES

Am. Jur. — 12 Am. Jur. 2d, Boundaries, § 1.

C.J.S. — 11 C.J.S., Boundaries, § 1 et seq.

55-1604. Filing requirements. — A professional land surveyor shall complete, sign, and file with the county clerk and recorder of the county where the corner is situated, a written record of the establishment or restoration of a corner. This record shall be known as a “corner record” and such a filing shall be made for every public land survey corner and accessory to such corner which is established, reestablished, monumented,

remonumented, restored, rehabilitated, perpetuated or used as control in any survey. The survey information shall be filed within ninety (90) days after the survey is completed, unless the corner and its accessories are substantially as described in an existing corner record filed in accordance with the provisions of this chapter.

In lieu of filing as heretofore provided, corner records may be recorded by photographic process in those counties which have such facilities.

History.

1967, ch. 215, § 4, p. 647; am. 1972, ch. 162, § 1, p. 363; am. 1993, ch. 206, § 4, p. 564.

JUDICIAL DECISIONS

Lost or Obliterated Corners.

Bureau of land management publications are not statutes and they may not be utilized to establish burdens of proof in real property disputes involving lost or obliterated corners. State ex rel. Evans v. Barnett, 116 Idaho 429, 776 P.2d 438 (1989).

In a dispute concerning the location of the section line forming the legal boundary between the land owned by the state and the adjoining property owners, the state had the initial burden of coming forward with evidence showing the original survey point of the corner could not be determined and its location could be restored only by reference to adjacent corners. If this burden is met, the adjoining property owners, in order to sustain their contention that the corner is obliterated,

must come forward with evidence showing although there are no remaining traces of the original monument, either the location has been perpetuated or the point may be recovered beyond reasonable doubt by other acceptable evidence. State ex rel. Evans v. Barnett, 114 Idaho 355, 757 P.2d 218 (Ct. App. 1988).

Where neither expert witness believed beyond a reasonable doubt that the place marked by a timber cruiser in or near the fence was an obliterated corner, the state met its burden of proving the corner was lost and was properly restored through proportional measurements derived from the original surveyor's field notes. State ex rel. Evans v. Barnett, 114 Idaho 355, 757 P.2d 218 (Ct. App. 1988).

RESEARCH REFERENCES

Am. Jur. — 12 Am. Jur. 2d, Boundaries, §§ 51, 68.

C.J.S. — 11 C.J.S., Boundaries, §§ 28 to 33.

55-1605. Filing or recording. — A professional land surveyor may file or record any corner record as to any property controlling corner or accessory to a corner.

History.

1967, ch. 215, § 5, p. 647; am. 1972, ch. 162,

§ 2, p. 363; am. 1993, ch. 206, § 5, p. 564; am. 2011, ch. 136, § 14, p. 383.

STATUTORY NOTES

Amendments.

The 2011 amendment, by ch. 136, deleted "property corner" and "reference monument"

preceding and following "property controlling corner," respectively.

55-1606. Filing or recording information. — The board shall, by regulation, provide and prescribe the information which shall be necessary to be included in the corner record and the board shall prescribe the form in which such corner record shall be presented and filed or recorded.

History.

1967, ch. 215, § 6, p. 647; am. 1972, ch. 162, § 3, p. 363.

55-1607. County clerk to keep record — Fees. — (a) The county clerk and recorder of the county containing the corner shall receive the completed corner record and preserve it in the same manner as any other recorded instruments. Proper indexes shall be kept of such corner records by section, township and range.

(b) The county clerk and recorder shall make these records available for public inspection during all usual office hours.

(c) For purposes of determining the filing fee hereunder, the corner record shall be considered as a similar service to the filing or recording of instruments as provided in section 31-3205, Idaho Code. However, all corners, monuments and their accessories established prior to the effective date of this chapter, for which a written record is completed as required herein, and which are offered for filing or recording within six (6) months of the effective date of this chapter, shall be accepted and filed by the county clerk without requiring the payment of fees therefor.

History.

1967, ch. 215, § 7, p. 647; am. 1972, ch. 162, § 4, p. 363; am. 1993, ch. 206, § 6, p. 564; am. 1997, ch. 190, § 14, p. 517.

STATUTORY NOTES

Compiler's Notes.

The phrase "the effective date of this chapter" in subsection (c) was originally enacted as "the effective date of this act" by S.L. 1965, ch. 215, the effective date of which was May 23, 1967.

55-1608. Professional land surveyor to reconstruct monuments. — (1) In every case where a corner record of a survey corner is required to be filed or recorded under the provisions of this chapter, the professional land surveyor must reconstruct or rehabilitate the monument of such corner, and accessories to such corner.

(2) Any monument set shall conform to the provisions of section 54-1227, Idaho Code, and shall be surmounted with a cap of such material and size that can be permanently and legibly marked as prescribed by the manual of surveying instructions issued by the United States department of the interior, bureau of land management, including the license number of the professional land surveyor responsible for placing the monument. Monuments shall be marked such that measurements between them may be made to the nearest one-tenth (0.1) foot. If the monument is set by a public officer, it shall be marked by an appropriate official designation.

(3) When nonmetallic corner monuments were set in a survey conducted by an agency of the United States government, the corner location shall be remonumented with a monument conforming to the provisions of section 54-1227, Idaho Code, and shall be surmounted with a cap of such material and size that can be permanently and legibly marked as prescribed by the manual of surveying instructions issued by the United States department of the interior, bureau of land management, including the license number of the professional land surveyor responsible for placing the monument.

Monuments shall be marked such that measurements between them may be made to the nearest one-tenth (0.1) foot.

History.

1967, ch. 215, § 8, p. 647; am. 1972, ch. 162, § 5, p. 363; am. 1978, ch. 107, § 2, p. 221; am.

1993, ch. 206, § 7, p. 564; am. 2008, ch. 378, § 28, p. 1047; am. 2011, ch. 136, § 15, p. 383.

STATUTORY NOTES**Amendments.**

The 2008 amendment, by ch. 378, in the first paragraph, deleted “so that it will be as permanent a monument as is reasonably possible to provided and so that it may be located with facility at any time in the future” from the end; and in the last paragraph, rewrote the first sentence, which formerly read: “Any monument set shall be permanently marked or tagged with the certificate number of the professional land surveyor in responsible charge.”

The 2011 amendment, by ch. 136, added the

subsection (1) designation to the existing first paragraph; added the subsection (2) designation to the existing second paragraph and therein, in the first sentence, added the language beginning “and shall be surmounted with a cap” through to the end, and added the second sentence; and added subsection (3).

Compiler’s Notes.

For more on the manual of surveying instructions for the bureau of land management, see <http://www.blmsurveymanual.org>.

RESEARCH REFERENCES

C.J.S. — 11 C.J.S., Boundaries, §§ 17 to 21.

55-1609. To be signed by professional land surveyor or government agent. — No corner record shall be filed or recorded unless the same is signed by a professional land surveyor as defined herein, or, in the case of an agency of the United States government, the certificate may be signed by the survey party chief making the survey.

History.

1967, ch. 215, § 9, p. 647; am. 1972, ch. 162, § 6, p. 363; am. 1993, ch. 206, § 8, p. 564.

55-1610. Preexisting records. [Repealed.]

STATUTORY NOTES**Compiler’s Notes.**

This section, which comprised 1967, ch. 215, § 10, p. 647; am. 1972, ch. 162, § 7, p.

363, was repealed by S.L. 1993, ch. 206, § 9, effective July 1, 1993.

55-1611. Federal government filings without fees. — All federal government surveys performed by authorized personnel of agencies of the federal government shall not be subject to the provisions of this chapter, except that federal agencies may comply with the provisions of the chapter, and shall be exempt from filing fees required in section 55-1607(c), Idaho Code.

History.

1967, ch. 215, § 11, p. 647; am. 1993, ch. 206, § 10, p. 564.

55-1612. Penalty. — Professional land surveyors failing to comply with the provisions hereof shall be deemed to be within the purview of section 54-1220, Idaho Code, and shall be subject to disciplinary action as in said section provided.

History.

1967, ch. 215, § 12, p. 647; am. 1989, ch. 103, § 1, p. 236; am. 1993, ch. 206, § 11, p.

564; am. 1997, ch. 190, § 15, p. 517; am. 2008, ch. 378, § 29, p. 1047.

STATUTORY NOTES

Amendments.

The 2008 amendment, by ch. 378, deleted “and professional engineers who prepare plans which do not indicate the presence of corners for which adequate evidence exists” following “provisions hereof,” and the last sentence, which pertained to the penalties prescribed in section 54-1234, Idaho Code.

Compiler's Notes.

Section 13 of S. L. 1967, ch. 215, read: “Severability. — If any provision of this act shall be declared invalid, such invalidity shall not affect any other portion of this act which can be given effect without the invalid portion, and to this end the provisions of this act are declared to be severable.”

55-1613. Monuments disturbed by construction activities — Procedure — Requirements. — The physical existence and location of the monuments of property controlling corners and accessories to corners, as well as benchmarks established and points set in control surveys by agencies of the United States government or the state of Idaho, shall be determined by a field search and location survey conducted by or under the direction of a professional land surveyor prior to the time when project construction or related activities may disturb them. Construction documents or plans prepared by professional engineers shall show the existence and location of all such monuments, accessories to corners, benchmarks and points set in control surveys. All monuments, accessories to corners, benchmarks and points set in control surveys that are lost or disturbed by construction shall be reestablished and remonumented, at the expense of the agency or person causing their loss or disturbance, at their original location or by the setting of a witness corner or reference point or a replacement benchmark or control point, by or under the direction of a professional land surveyor. Professional engineers who prepare construction documents or plans that do not indicate the existence and location of all such monuments, accessories to corners and benchmarks and points set in control surveys by agencies of the United States government or the state of Idaho shall be deemed to be within the purview of and subject to disciplinary action as provided in section 54-1220, Idaho Code.

History.

I.C., § 55-1613, as added by 1978, ch. 107, § 3, p. 221; am. 1993, ch. 206, § 12, p. 564;

am. 1997, ch. 190, § 16, p. 517; am. 2008, ch. 378, § 30, p. 1047; am. 2011, ch. 136, § 16, p. 383.

STATUTORY NOTES

Amendments.

The 2008 amendment, by ch. 378, rewrote the section to the extent that a detailed comparison is impracticable.

The 2011 amendment, by ch. 136, rewrote the section, revising procedures and requirements relating to monuments disturbed by construction or related activities.

OPINIONS OF ATTORNEY GENERAL

Public recording of a survey performed in accordance with United States manual of surveying instructions, in conjunction with vi-

sual presence of a land survey monument, constitutes "adequate evidence" as referenced in this section. OAG 92-3.

CHAPTER 17

COORDINATE SYSTEM OF LAND DESCRIPTION

SECTION.

55-1701. Establishing coordinate system — Designating zones.

55-1702. Zone references.

55-1703. Plane coordinates.

55-1704. Documents reporting coordinates within two zones.

55-1705. Zone definitions.

SECTION.

55-1706. Five kilometer triangulation limitation. [Repealed.]

55-1707. Use of term. [Repealed.]

55-1708. Coordinate descriptions supplemental.

55-1709. Description by coordinate not mandatory.

55-1701. Establishing coordinate system — Designating zones. —

(1) The system of plane coordinates which has been established by the national ocean service/national geodetic survey, or its successors, for defining and stating the positions or locations of points within the state of Idaho is to be known and designated as the "Idaho coordinate system of 1983." On and after January 1, 1996, only the "Idaho coordinate system of 1983" shall be used.

(2) For the purpose of the use of this system the state is either divided into an "east zone," a "central zone," and a "west zone" or alternatively, a state comprehensive "single zone."

(3) The area included in the following counties shall constitute the east zone: Bannock, Bear Lake, Bingham, Bonneville, Caribou, Clark, Franklin, Fremont, Jefferson, Madison, Oneida, Power and Teton.

(4) The area included in the following counties shall constitute the central zone: Blaine, Butte, Camas, Cassia, Custer, Gooding, Jerome, Lemhi, Lincoln, Minidoka and Twin Falls.

(5) The area included in the following counties shall constitute the west zone: Ada, Adams, Benewah, Boise, Bonner, Boundary, Canyon, Clearwater, Elmore, Gem, Idaho, Kootenai, Latah, Lewis, Nez Perce, Owyhee, Payette, Shoshone, Valley and Washington.

(6) The area included within the boundaries of the state of Idaho shall constitute the single zone.

History.

1967, ch. 275, § 1, p. 771; am. 1995, ch. 70, § 1, p. 178; am. 2010, ch. 256, § 3, p. 649.

STATUTORY NOTES

Amendments.

The 2010 amendment, by ch. 256, added the subsection (1) through (5) designations; in subsection (1), in the first sentence, deleted "formerly the United States coast and geodetic survey" following "geodetic survey," "on

the surface of the earth" following "location of points," and "and the 'Idaho coordinate system of 1927'" from the end, and deleted the second sentence, which formerly read: "The Idaho coordinate system of 1927 may be used through December 31, 1995"; in subsection

(2), inserted “either” and added “or alternatively, a state comprehensive ‘single zone’”; in subsections (3) through (5), deleted “now” preceding “included”; and added subsection (6).

Compiler’s Notes.

For more on the national geodetic survey, see <http://www.ngs.noaa.gov>.

For more on the national ocean service, see <http://www.oceanservice.noaa.gov>.

55-1702. Zone references. — (1) As established for use in the east zone, the Idaho coordinate system of 1983 shall be named, and in any document in which it is used it shall be designated the “Idaho coordinate system of 1983, east zone.”

(2) As established for use in the central zone, the Idaho coordinate system of 1983 shall be named, and in any document in which it is used it shall be designated the “Idaho coordinate system of 1983, central zone.”

(3) As established for use in the west zone, the Idaho coordinate system of 1983 shall be named, and in any document in which it is used it shall be designated the “Idaho coordinate system of 1983, west zone.”

(4) As established for use in the single zone, the Idaho coordinate system of 1983 shall be named, and in any document in which it is used it shall be designated the “Idaho coordinate system of 1983, single zone.”

History.

1967, ch. 275, § 2, p. 771; am. 1995, ch. 70, § 2, p. 178; am. 2010, ch. 256, § 4, p. 649.

STATUTORY NOTES

Amendments.

The 2010 amendment, by ch. 256, rewrote the section, designating the existing provi-

sions as subsections (1) to (3), deleting references to “the Idaho coordinate system of 1927”, and adding subsection (4).

55-1703. Plane coordinates. — The plane coordinates to be used in expressing the position or location of a point in the appropriate zone of this system, shall consist of two (2) distances expressed in meters and decimals of a meter or in United States survey feet and decimals of a foot when using the Idaho coordinate system of 1983. For conversion purposes, one (1) United States survey foot equals one thousand two hundred (1,200) divided by three thousand nine hundred thirty-seven (3,937) meters. One (1) of these distances, to be known as “northing” or “N” shall give the position in a north-and-south direction; the other, to be known as the “easting” or “E” shall give the position in an east-and-west direction. These coordinates shall be made to depend upon and conform to the plane rectangular coordinate values of the national spatial reference system as maintained and provided by the national ocean service/national geodetic survey or its successors.

History.

1967, ch. 275, § 3, p. 771; am. 1995, ch. 70, § 3, p. 178; am. 2010, ch. 256, § 5, p. 649.

STATUTORY NOTES

Amendments.

The 2010 amendment, by ch. 256, rewrote

the section to the extent that a detailed comparison is impracticable.

Compiler's Notes.

For more on the national geodetic survey,
see <http://www.ngs.noaa.gov>.

For more on the national ocean service, see
<http://www.oceanservice.noaa.gov>.

55-1704. Documents reporting coordinates within two zones. —

When any document reports coordinates that lie within two (2) coordinate zones, the coordinates of all points shall refer to one (1) of the zones which shall be named in the document.

History.

1967, ch. 275, § 4, p. 771; am. 2010, ch. 256,
§ 6, p. 649.

STATUTORY NOTES**Amendments.**

The 2010 amendment, by ch. 256, rewrote

the section to the extent that a detailed comparison is impracticable.

55-1705. Zone definitions. — For the purpose of more precisely defining the Idaho coordinate system of 1983, the following definitions are adopted:

(1) The Idaho coordinate system of 1983, east zone, is a transverse mercator projection of the North American datum of 1983 based on the geodetic reference system of 1980 (GRS 80), having a central meridian 112°10' west of Greenwich, which meridian has a reduced scale of one (1) part in nineteen thousand (19,000). The origin of coordinates is at the intersection of the meridian 112°10' west of Greenwich and the parallel 41°40' north latitude. This origin is given the coordinates: N=0 meters and E=200,000 meters.

(2) The Idaho coordinate system of 1983, central zone, is a transverse mercator projection of the North American datum of 1983 based on the geodetic reference system of 1980 (GRS 80), having a central meridian 114°00' west of Greenwich, which meridian has a reduced scale of one (1) part in nineteen thousand (19,000). The origin of coordinates is at the intersection of the meridian 114°00' west of Greenwich and the parallel 41°40' north latitude. This origin is given the coordinates: N=0 meters and E=500,000 meters.

(3) The Idaho coordinate system of 1983, west zone, is a transverse mercator projection of the North American datum of 1983 based on the geodetic reference system of 1980 (GRS 80), having a central meridian 115°45' west of Greenwich, which meridian has a reduced scale of one (1) part in fifteen thousand (15,000). The origin of coordinates is at the intersection of the meridian 115°45' west of Greenwich and the parallel 41°40' north latitude. This origin is given the coordinates: N=0 meters and E=800,000 meters.

(4) The Idaho coordinate system of 1983, single zone, is a transverse mercator projection of the North American datum of 1983 based on the geodetic reference system of 1980 (GRS 80), having a central meridian 114°00' west of Greenwich, which meridian has a reduced scale of one (1) part in two thousand five hundred (2,500). The origin of coordinates is at the intersection of the meridian 114°00' west of Greenwich and the parallel

42°00' north latitude. This origin is given the coordinates: N=1,200,000 meters and E=2,500,000 meters.

History.

1967, ch. 275, § 5, p. 771; am. 1995, ch. 70, § 4, p. 178; am. 2010, ch. 256, § 7, p. 649.

STATUTORY NOTES

Amendments.

The 2010 amendment, by ch. 256, rewrote the section to the extent that a detailed comparison is impracticable.

Compiler's Notes.

The abbreviations enclosed in parentheses so appeared in the law as enacted.

55-1706. Five kilometer triangulation limitation. [Repealed.]

Repealed by S.L. 2010, ch. 256, § 8, effective July 1, 2010.

History.

1967, ch. 275, § 6, p. 771; am. 1995, ch. 70, § 5, p. 178.

55-1707. Use of term. [Repealed.]

Repealed by S.L. 2010, ch. 256, § 9, effective July 1, 2010.

History.

1967, ch. 275, § 7, p. 771; am. 1995, ch. 70, § 6, p. 178.

55-1708. Coordinate descriptions supplemental. — Whenever coordinates based on the Idaho coordinate system are used to describe any tract of land which in the same document is also described by reference to any subdivision, line or corner of the United States public land surveys, the description by coordinates shall be construed as supplemental to the basic description of such subdivision, line or corner contained in the official plats and field notes of the United States public land surveys filed of record, and in the event of any conflict the description by reference to the subdivision, line or corner of the United States public land surveys shall prevail over the description by coordinates unless said coordinates are upheld by adjudication, at which time the coordinate description shall prevail. Every recorded map, survey or conveyance or other instrument affecting title to real property which delineates, describes or refers to such property or any part thereof by reference to coordinates based upon the designated Idaho coordinate system shall also describe the property by reference and tie to either section corner or quarter corner monuments of the United States public land surveys.

History.

1967, ch. 275, § 8, p. 771; am. 1995, ch. 70, § 7, p. 178; am. 2010, ch. 256, § 10, p. 649.

STATUTORY NOTES

Amendments.

The 2010 amendment, by ch. 256, inserted "of the United States public land surveys" in the first sentence.

55-1709. Description by coordinate not mandatory. — Nothing contained in this chapter shall require any purchaser or mortgagee of real property to rely wholly on a land description, any part of which depends exclusively upon the designated Idaho coordinate system.

History.

1967, ch. 275, § 9, p. 771; am. 1995, ch. 70, § 8, p. 178.

STATUTORY NOTES

Compiler's Notes.

Section 10 of S.L. 1967, ch. 275, read: "Severability. — If any provision of this act shall be declared invalid, such invalidity shall

not affect any other portion of this act which can be given effect without the invalid portion, and to this end the provisions of this act are declared to be severable."

CHAPTER 18

SALE OR DISPOSITION OF LAND LOCATED OUTSIDE THE STATE

SECTION.

- 55-1801. Title.
- 55-1802. Definitions.
- 55-1803. Administration of chapter.
- 55-1804. Prohibitions on dispositions of interests in subdivisions.
- 55-1804A. Right of rescission.
- 55-1805. Exemptions.
- 55-1806. Application for registration.
- 55-1807. Public offering statement.
- 55-1808. Examination by commission of application for registration.
- 55-1809. Notice of filing — Registration — Rejection of application — Fees.
- 55-1810. Renewal report — Duty to report convictions and judgments.

SECTION.

- 55-1811. General powers and duties.
- 55-1812. Fraudulent practices.
- 55-1813. Investigations and proceedings.
- 55-1814. Cease and desist orders.
- 55-1815. Revocation.
- 55-1816. Judicial review.
- 55-1817. Real estate license required.
- 55-1818. Extradition.
- 55-1819. Civil remedy.
- 55-1819A. Noncompliance — Unfair practice under the Idaho consumer protection act.
- 55-1820. Jurisdiction.
- 55-1821. Service of process.
- 55-1822. Evidentiary matters.
- 55-1823. Penalties.

55-1801. Title. — This chapter shall be known and may be cited as the "Subdivided Lands Disposition Act."

History.

1972, ch. 276, § 1, p. 667; am. 2010, ch. 214, § 1, p. 468.

STATUTORY NOTES

Amendments.

The 2010 amendment, by ch. 214, substituted "chapter" for "act."

JUDICIAL DECISIONS

Application.

The Subdivided Lands Disposition Act (§§ 55-1801 to 55-1823) relates to the sale or

disposition of land located outside of the state of Idaho. *Lowe v. Lym*, 103 Idaho 259, 646 P.2d 1030 (Ct. App. 1982).

55-1802. Definitions. — When used in this chapter, unless the context otherwise requires:

- (1) "Commission" means the Idaho real estate commission.
- (2) "Disposition" includes sale, lease, assignment, award by lottery or any other transaction concerning a subdivision, if undertaken for gain or profit.
- (3) "Offer" includes any inducement, solicitation or attempt to encourage a person to acquire an interest in land, if undertaken for gain or profit.
- (4) "Person" means an individual, corporation, government, governmental subdivision or agency, business trust, estate, trust, partnership, unincorporated association, two (2) or more of any of the foregoing having a joint or common interest or any other legal or commercial entity.
- (5) "Purchaser" means a person who acquires or attempts to acquire or succeeds to an interest in land.
- (6) "Subdivider" means any owner of subdivided land who offers it for disposition or the principal agent of an inactive owner.
- (7) "Subdivision" or "subdivided lands" means and includes the following:
 - (a) Any land situated outside the state of Idaho that is divided or is proposed to be divided for the purpose of disposition into five (5) or more lots, parcels, units or interests and also includes any land, whether contiguous or not, if five (5) or more lots, parcels, units or interests are offered as a part of a common promotional plan of advertising and sale;
 - (b) Any time shared property located within or without this state that is offered to purchasers or is proposed to be offered to purchasers.
- (8) "Time shared property" means any real property in which the use and occupancy rights are divided or proposed to be divided into more than thirteen (13) units, interests or parcels in accordance with a fixed or variable time schedule on a periodic basis that allocates the use or occupancy among the persons holding similar interests, whether such use or occupancy rights are granted by deed, contract or share certificate.

History.

1972, ch. 276, § 2, p. 667; am. 1984, ch. 61, § 1, p. 109; am. 2010, ch. 214, § 2, p. 468.

STATUTORY NOTES

Cross References.

Idaho real estate commission, § 54-2025 et seq.

Amendments.

The 2010 amendment, by ch. 214, in the introductory language substituted "chapter" for "act"; in the introductory language in

subsection (7), substituted "or" for "and" and added "and includes the following"; in paragraph (7)(b), deleted "In addition to the definition stated in subsection 7.a. above, 'subdivision' and 'subdivided lands' mean" from the beginning; and in subsection (8), added "whether such use or occupancy rights are granted by deed, contract or share certificate."

55-1803. Administration of chapter. — This chapter shall be administered by the Idaho real estate commission.

History.

1972, ch. 276, § 3, p. 667; am. 2010, ch. 214, § 3, p. 468.

STATUTORY NOTES

Cross References.

Idaho real estate commission, § 54-2025 et seq.

section heading and in text, substituted “chapter” for “act.”

Amendments.

The 2010 amendment, by ch. 214, in the

55-1804. Prohibitions on dispositions of interests in subdivisions. — Unless the subdivided lands or the transaction is exempt under section 55-1805, Idaho Code, it shall be unlawful for any person to make in this state:

(1) Any offer or disposition of any interest in subdivided lands located without this state prior to the time that the subdivided lands are registered in accordance with this chapter.

(2) Any offer or disposition of any interest in a time shared property located within or without this state prior to the time that the time shared property is registered in accordance with this chapter.

(3) Any disposition of any interest in subdivided lands without delivering to the purchaser an effective current public offering statement, obtaining a dated and signed receipt and affording the purchaser a reasonable opportunity to examine the statement.

An offer is made in this state, whether or not the offeror or offeree is then present in this state, if the offer originates within this state or is directed by the offeror to a person or place in this state and received by the person or at the place to which it is directed.

History.

1972, ch. 276, § 4, p. 667; am. 1984, ch. 61, § 2, p. 109; am. 2010, ch. 214, § 4, p. 468.

STATUTORY NOTES

Amendments.

The 2010 amendment, by ch. 214, in the introductory paragraph, inserted “to make”; in subsections (1) and (3), substituted “Any offer or disposition” for “To offer or to dispose” or similar language and “chapter” for “act”; deleted subsection (2), which formerly read: “To dispose of any interest in subdivided lands

unless a current public offering statement is delivered to the purchaser and the purchaser is afforded a reasonable opportunity to examine the public offering statement prior to the disposition” and redesignated former subsection (3) as present subsection (2); and added subsection (3).

55-1804A. Right of rescission. — Any contract or agreement of disposition for an interest in subdivided lands may be rescinded by the purchaser without cause by personally delivering or sending by certified mail, a written notice of cancellation to the subdivider on or before 11:59

p.m. of the fifth calendar day after execution of the contract or agreement of disposition. The contract or agreement of disposition shall state this right and terms in boldface type on the signature page and shall include the address of the subdivider.

History.

I.C., § 55-1804A, as added by 2010, ch. 214,
§ 5, p. 468.

55-1805. Exemptions. — (1) Unless the method of disposition is adopted for the purpose of evasion of this chapter, the registration provisions of this chapter do not apply to offers or dispositions of an interest in land:

- (a) By a purchaser of subdivided lands for his own account in a single or isolated transaction;
- (b) If fewer than five (5) separate lots, parcels, units or interests in subdivided lands are offered by a person in a period of twelve (12) months;
- (c) By any salaried employee in the normal course of his employment for an owner who is not in the business of making real estate sales when the transaction is incidental to the principal activities or business of the owner and where no added incentive such as a bonus or commission or other fee is paid to the employee for the transaction;
- (d) By any person holding a duly executed power of attorney from the owner or principal agent of an inactive owner when the power of attorney is executed for the performance of a specific real estate transaction;
- (e) To persons who are engaged in the business of construction of buildings for resale or to persons who acquire an interest in subdivided lands for the purpose of engaging, and do engage, in the business of construction of buildings for resale;
- (f) Pursuant to court order;
- (g) By any government or government agency; or
- (h) As cemetery lots or interests.

(2) Unless the method of disposition is adopted for the purpose of evasion of this chapter, the registration provisions of this chapter do not apply to offers and dispositions of securities currently registered with the Idaho department of finance.

History.

1972, ch. 276, § 5, p. 667; am. 2010, ch. 214,
§ 6, p. 468.

STATUTORY NOTES

Amendments.

The 2010 amendment, by ch. 214, in the introductory paragraphs in subsection (1) and in subsection (2), twice substituted “chapter” for “act”; in subsection (2), substituted “Idaho department of finance” for “Idaho commis-

sioner”; and deleted the paragraph (2)a designation and paragraph (2)b, which read: “A subdivision to which the commission has granted an exemption as provided in section 55-1811.”

55-1806. Application for registration. — (1) The application for

registration of subdivided lands shall be filed as prescribed by the commission and shall contain the following documents and information:

- (a) An irrevocable appointment of the commission to receive service of any lawful process in any noncriminal proceeding arising under this chapter against the applicant or his personal representative;
- (b) A legal description of the subdivided lands offered for registration, together with a map showing the division proposed or made, the dimensions of the lots, parcels, units or interests, and the relation of the subdivided lands to existing streets, roads, waterways, schools, churches, shopping centers, public transportation facilities in existence or under construction and other off-site improvements, in existence or under construction;
- (c) The state or jurisdictions in which an application for registration or similar document has been filed, and any adverse order, judgment or decree entered in connection with the subdivided lands by the regulatory authorities in each jurisdiction or by any court;
- (d) The applicant's name, address, and the form, date and jurisdiction of organization and the address of each of its offices in this state;
- (e) If a corporation, partnership or other legal entity, the name, address and principal occupation for the past five (5) years of every director, officer, general partner, member, manager or person occupying a similar status or performing similar functions; the extent and nature of his interest in the applicant or the subdivided lands as of a specified date within thirty (30) days of the filing of the application;
- (f) A statement indicating whether, within the past ten (10) years, the applicant, its individual directors, officers, general partners, members or managers have been:
 - (i) Convicted of a crime involving land dispositions or any aspect of the land sales business in this state, the United States or any other state or foreign country;
 - (ii) Adjudicated liable and had a civil judgment entered against him for making a false or misleading promotional plan involving land dispositions; or
 - (iii) Subject to any injunction or administrative order restraining a false or misleading promotional plan involving land dispositions.
- (g) A statement, in a form acceptable to the commission, of the condition of the title to the subdivided lands including encumbrances as of a specified date within thirty (30) days of the date of application by a title opinion of a licensed attorney, not a salaried employee, officer or director of the applicant or owner, or by other evidence of title acceptable to the commission;
- (h) Copies of the instruments which will be delivered to a purchaser to evidence his interest in the subdivided lands and of the contracts and other agreements that a purchaser will be required to agree to or sign;
- (i) Copies of the instruments by which the interest in the subdivided lands was acquired and a statement of any lien or encumbrance upon the title and copies of the instruments creating the lien or encumbrance, if any, with data as to recording;

- (j) If there is a lien or encumbrance affecting more than one (1) lot, parcel, unit or interest, a statement of the consequences for a purchaser of failure to discharge the lien or encumbrance and the steps, if any, taken to protect the purchaser in case of this eventuality;
 - (k) Copies of instruments creating easements, restrictions or other encumbrances affecting the subdivided lands;
 - (l) A statement of the zoning and other governmental regulations affecting the use of the subdivided lands and also of any existing tax and existing or proposed special taxes or assessments that affect the subdivided lands;
 - (m) A statement of the existing provisions for legal and physical access or, if none exists, a statement to that effect; a statement of the existing or proposed provisions for sewage disposal, water and other public utilities in the subdivision; a statement of the improvements to be installed, the schedule for their completion and a statement as to the provisions for improvement maintenance;
 - (n) A narrative description of the promotional plan for the disposition of the subdivided lands, including the range of selling prices or rents at which it is proposed to dispose of the lots in the subdivision, together with copies of all advertising material that has been prepared for public distribution by any means of communication;
 - (o) A copy of its articles of incorporation, with all amendments thereto, if the subdivider is a corporation; copies of all instruments by which the trust is created or declared, if the subdivider is a trust; copies of its articles of partnership or association and all other papers pertaining to its organization, if the subdivider is a partnership, unincorporated association or any other legal or commercial entity; and if the purported holder of legal title is a person other than the subdivider, copies of the above documents for such person;
 - (p) The proposed public offering statement;
 - (q) Such current financial statements, certified or otherwise, as the commission may require; and
 - (r) Such other information and such other documents and certifications as the commission may require as being reasonably necessary or appropriate for the protection of purchasers.
- (2) If the subdivider registers additional subdivided lands to be offered for disposition, he may consolidate the subsequent registration with any earlier registration offering subdivided lands for disposition under the same promotional plan.
- (3) The subdivider shall immediately report to the commission any material changes in the information contained in an application for registration.
- (4) As a condition precedent to the registration of any subdivided lands, the commission shall require that the subdivider file a bond executed to the state of Idaho for the protection of any person and conditioned for the faithful compliance by the subdivider, his agents and his employees with all of the provisions of this chapter and with all rules and orders made pursuant thereto and for the faithful performance and payment of all

obligations of the subdivider, his agents and his employees in connection with the registration, including any order to pay the costs and attorney's fees incurred by the commission or by any other agency of this state, in an administrative or judicial proceeding to enforce the provisions of this chapter or the provisions of chapter 6, title 48, Idaho Code. The bond shall be of such type and in such form as the commission shall deem necessary to comply with the provisions of this subsection and shall be in the amount of one hundred thousand dollars (\$100,000). Any such bond shall have as surety thereon a surety company authorized to do business in this state. Such bond shall remain in effect for one (1) calendar year after the earlier to occur of the following:

- (a) The subdivision is no longer required to be registered pursuant to this chapter;
- (b) The subdivider elects to discontinue offering for disposition interests in the subdivision and therefor [therefore] elects not to renew the registration of the subdivision pursuant to this chapter;
- (c) The provisions of this chapter no longer require the subdivider to post any bond; or
- (d) The subdivider deposits sufficient funds in an approved escrow account or trust fund in lieu of the bond; provided, the bond shall continue to insure any covered claim filed against the subdivider, and of which the commission received written notice during the time the bond was in effect and until the claim has been finally resolved, including any appeal process.

(5) In lieu of filing a bond, the commission may accept funds deposited by the subdivider into an escrow depository acceptable to the commission or into a trust account acceptable to the commission. The deposited funds shall be maintained for the same purposes and upon the same terms and conditions as set forth in subsection (4) of this section.

History.

1972, ch. 276, § 6, p. 667; am. 2010, ch. 214, § 7, p. 468.

STATUTORY NOTES

Cross References.

Surety companies, § 41-2603 et seq.

Amendments.

The 2010 amendment, by ch. 214, in paragraph (1)(a), substituted "chapter" for "act"; in paragraph (1)(e), added "If a corporation, partnership or other legal entity" and substituted "every director, officer, general partner, member, manager or person" for "every director and officer of the applicant or person"; added paragraph (1)(f) and redesignated the subsequent paragraphs in subsection (1); in the introductory paragraph in subsection (4), in the first sentence, deleted "use, benefit, and" preceding "protection" and "regulations" following "rules," substituted "this chapter"

for "this act, as amended," and added the language beginning "including any order to pay the costs" through to the end, in the second sentence, deleted "indemnity" preceding "bond" and "and shall be in such amount" following "such form," and substituted "to comply with the provisions of this subsection and shall be in the amount of one hundred thousand dollars (\$100,000)" for "to protect purchasers when the volume of business of the subdivider and other relevant factors are taken into consideration, but in no event less than ten thousand dollars (\$10,000)," and added the last sentence; and added paragraphs (4)(a) though (4)(d) and subsection (5).

Compiler's Notes.

The bracketed insertion in paragraph (4)(b)

was added by the compiler to supply the probable intended term.

55-1807. Public offering statement. — (1) A public offering statement shall disclose fully and accurately the physical characteristics of the subdivided lands offered and shall make known to prospective purchasers all unusual and material circumstances or features affecting the subdivided lands. The proposed public offering statement submitted to the commission shall be in a form prescribed by it and shall include the following:

- (a) The name and principal address of the subdivider;
- (b) A general description of the subdivided lands stating the total number of lots, parcels, units or interests in the offering;
- (c) The significant terms of any encumbrances, easements, liens and restrictions, including zoning and other regulations, affecting the subdivided lands and each unit or lot, and a statement of all existing taxes and existing or proposed special taxes or assessments that affect the subdivided lands;
- (d) A statement of the use for which the property is offered;
- (e) Information concerning improvements in existence or under construction including streets, water supply, levees, drainage control systems, irrigation systems, sewage disposal facilities and customary utilities, and the estimated cost, date of completion and responsibility for construction and maintenance of existing and proposed improvements that are referred to in connection with the offering or disposition of any interest in subdivided lands; and
- (f) Such of the information contained in the application for registration, and any amendments thereto, and such other information as the commission may require as being necessary or appropriate in the public interest or for the protection of purchasers.

(2) The public offering statement shall disclose, in a prominent place and in bold type, the right of rescission as required in section 55-1804A, Idaho Code.

(3) The public offering statement shall not be used for any promotional purposes before registration of the subdivided lands and afterwards only if it is used in its entirety. No person may advertise or represent that the commission approves or recommends the subdivided lands or disposition thereof. No portion of the public offering statement may be underscored, italicized or printed in larger or heavier or different color type than the remainder of the statement except as required by statute or rule of the commission.

(4) The commission may require the subdivider to alter or amend the proposed public offering statement in order to assure full and fair disclosure to prospective purchasers, and no change in the substance of the promotional plan or plan of disposition or development of the subdivision may be made after registration without notifying the commission and without making appropriate amendment of the public offering statement. A public offering statement is not current unless all amendments are incorporated.

(5) All advertising material of any nature prepared for use in connection

with the offer and disposition of any interests in subdivided lands registered under this chapter shall be submitted to the commission prior to its use.

History.

1972, ch. 276, § 7, p. 667; am. 2010, ch. 214, § 8, p. 468.

STATUTORY NOTES**Amendments.**

The 2010 amendment, by ch. 214, added subsection (2) and redesignated former subsections (2) and (3) as present subsections (3)

and (4); in subsection (3), substituted "except as required by statute or rule of the commission" for "unless the commission requires it"; and added subsection (5).

55-1808. Examination by commission of application for registration. — Upon receipt of an application for registration in proper form, the commission shall forthwith initiate an examination of the application for registration to determine that:

(1) The requirements of section 55-1806, Idaho Code, have been satisfied, the subdivider can convey or cause to be conveyed the interest in subdivided lands offered for disposition if the purchaser complies with the terms of the offer and, when appropriate, that release clauses, conveyances in trust, escrow and impoundage provisions and other safeguards have been provided;

(2) There is reasonable assurance that all proposed improvements will be completed as represented;

(3) There is no evidence which would reasonably lead the commission to believe that the subdivider, or if a corporation, partnership or other legal entity, its individual officers, directors, general partners, members, managers or other such principals are contemplating a fraudulent or misleading sales promotion; and

(4) The public offering statement requirements of this chapter have been satisfied.

History.

1972, ch. 276, § 8, p. 667; am. 2010, ch. 214, § 9, p. 468.

STATUTORY NOTES**Amendments.**

The 2010 amendment, by ch. 214, rewrote the section heading, which formerly read: "Inquiry and examination"; in the introductory paragraph, inserted "of the application for registration"; in subsection (1), inserted "requirements of section 55-1806, Idaho Code, have been satisfied, the"; deleted former subsections (3) and (4) which read: "3. The advertising material and the general promotional plan are not false or misleading and comply with the standards prescribed by the commission in its rules and regulations and afford full and fair disclosure; 4. The subdivider has not, or if a corporation, its officers, directors,

and principals have not been convicted of a crime involving land dispositions or any aspect of the land sales business in this state, the United States, or any other state or foreign country within the past ten (10) years and has not been subject to any injunction or administrative order within the past ten (10) years restraining a false or misleading promotional plan involving land dispositions;" and redesignated former subsections (5) and (6) as present subsections (3) and (4); in subsection (3), inserted "partnership or other legal entity," "individual," "general partners, members, managers," and "other such"; and in subsection (4), substituted "chapter" for "act."

55-1809. Notice of filing — Registration — Rejection of application — Fees. — (1) Upon receipt of the application for registration in proper form and of a base registration fee of two hundred fifty dollars (\$250), the commission shall issue a notice of filing to the applicant. In addition to the base registration fee, the following fees are payable prior to issuance of an order of registration; five dollars (\$5.00) per lot, parcel, unit or interest numbering fifty (50) to two hundred fifty (250); four dollars (\$4.00) per lot, parcel, unit or interest numbering two hundred fifty-one (251) to five hundred (500); three dollars (\$3.00) per lot, parcel, unit or interest numbering five hundred one (501) to seven hundred fifty (750); and two dollars and fifty cents (\$2.50) for each lot, parcel, unit or interest numbering in excess of seven hundred fifty (750). The application and registration fees shall not exceed a maximum fee of three thousand dollars (\$3,000).

(2) If an applicant submits the required filings using the web-based document management system sponsored by the association of real estate license law officials, the fees prescribed in this section, including the maximum fee, shall be reduced by twenty-five percent (25%). The reduction does not apply to late fees. The commission may promulgate rules changing or eliminating the fee reduction.

(3) Within ninety (90) days from the date of the notice of filing, the commission shall enter an order registering the subdivided lands or rejecting the registration. If no order of rejection is entered within ninety (90) days from the date of notice of filing, the land shall be deemed registered unless the applicant has consented in writing to a delay.

(4) If the commission determines that the requirements of sections 55-1806 through 55-1808, Idaho Code, have been met, it shall enter an order registering the subdivided lands and shall designate the form of the public offering statement.

(5) If the commission determines that any of the requirements of sections 55-1806 through 55-1808, Idaho Code, have not been met, the commission shall notify the applicant that the application for registration must be corrected in the particulars specified within ten (10) days or within the time otherwise allowed by the commission. If the requirements are not met within the time allowed, the commission shall enter an order rejecting the registration which shall state the basis for the rejection and advise the applicant of his right to request a hearing before the commission. The order rejecting the registration shall not become effective for twenty (20) days after service of the order, during which time the applicant may make a written request for a hearing. If a hearing is not timely requested, the order shall become the final agency action subject to judicial review under chapter 52, title 67, Idaho Code.

(6) Registration under this chapter shall be effective as of the date of the registration order for a period of one (1) year and may be renewed for additional periods of one (1) year by filing, not later than fifteen (15) days prior to the expiration of a registration, a renewal application in such form and containing such information as the commission shall prescribe, including the renewal report provided in section 55-1810, Idaho Code, together with the payment of a base renewal fee of two hundred fifty dollars (\$250),

plus one dollar (\$1.00) for each lot, parcel, unit or interest. The total fees for a timely renewal application shall not exceed a maximum fee of three thousand dollars (\$3,000). A late renewal fee of twenty-five dollars (\$25.00) per day will be charged for each day the renewal application is late, with a maximum late fee of five hundred dollars (\$500). A registration that is not renewed within twenty (20) days of expiration shall be deemed canceled and may not thereafter be renewed under the provisions of this section. Each amendment to the original registration requires a twenty-five dollar (\$25.00) fee. The initial registration and any renewal fees may not be returned or refunded for any reason.

(7) All fees collected by the commission under this chapter shall be deposited at least monthly with the state treasurer and said funds so deposited shall be deposited to the credit of the special real estate fund. All funds so deposited are hereby appropriated to the commission for the purpose of carrying out the provisions of this chapter. All expenditures from said fund by the commission under the provisions of this chapter shall be paid out on warrants drawn by the state controller upon presentation of proper vouchers approved by the commission. Such claims and supporting vouchers shall be examined by the state board of examiners in the same manner as other claims against the state of Idaho. For the purpose of carrying out the objects of this chapter and in the exercise of the powers herein granted, the commission shall have powers to make orders concerning the disbursement of the moneys in said special real estate fund, including the payment of compensation and expenses of its members, clerks and employees and for the payment of printing and for such other expenses as deemed necessary.

(8) The fact that an application for registration and public offering statement have been filed, or the fact that an order of registration has been issued, does not constitute a finding by the commission that any document is true, complete and not misleading, nor does either fact mean that the commission has determined in any way the merits, qualifications of or given its approval or recommendation to any person or subdivision. It is unlawful for any person to make, or cause to be made, to any prospective purchaser any representation inconsistent with the provisions of this subsection.

History.

1972, ch. 276, § 9, p. 667; am. 1983, ch. 109, § 6, p. 230; am. 1994, ch. 180, § 106, p. 420; am. 2010, ch. 214, § 10, p. 468.

STATUTORY NOTES

Cross References.

Special real estate fund, § 54-2021.
State board of examiners, § 67-2001 et seq.
State controller, § 67-1001 et seq.

license law officials, see <https://www.areallo.org>.

Amendments.

The 2010 amendment, by ch. 214, rewrote the section to the extent that a detailed comparison is impracticable, adding present subsections (2) and (8).

Compiler's Notes.

For more on the association of real estate

Effective Dates.

Section 241 of S.L. 1994, ch. 180 provided that such act should become effective on and after the first Monday in January, 1995 [January 2, 1995] if the amendment to the Constitution of Idaho changing the name of the state auditor to state controller [1994 S.J.R. No. 109, p. 1493] was adopted at the general election held on November 8, 1994. Since such

amendment was adopted, the amendment to this section by § 106 of S.L. 1994, ch. 180 became effective January 2, 1995.

55-1810. Renewal report — Duty to report convictions and judgments. — (1) The subdivider shall file a renewal report in the form prescribed by the commission. The renewal report shall reflect any material changes in information contained in the original application for registration. The renewal report must be filed with the renewal application not later than fifteen (15) days before the registration expiration date.

(2) If at any time after filing an initial or renewal application, a subdivider or any of its individual directors, officers, general partners, members, managers or other such principals, is convicted, has a judgment entered against it or is found liable in any court or administrative tribunal for any conduct referenced in section 55-1806 or 55-1815, Idaho Code, the subdivider shall, within thirty (30) days, forward to the commission a copy of the judgment, order or other document evidencing the same.

(3) The commission may initiate a renewal examination of the kind provided in section 55-1808, Idaho Code. If the commission determines that any of the requirements of sections 55-1806 through 55-1808, Idaho Code, have not been met, it shall notify the subdivider that the deficiency must be corrected within twenty (20) days or such other time as allowed by the commission. If the requirements are not met within the time allowed, the commission may, notwithstanding the provisions of section 55-1814, Idaho Code, issue a cease and desist order according to the emergency procedures of chapter 52, title 67, Idaho Code, barring further sales of the subdivided lands.

History.

1972, ch. 276, § 10, p. 667; am. 2010, ch. 214, § 11, p. 468.

STATUTORY NOTES

Amendments.

The 2010 amendment, by ch. 214, rewrote the section heading, which formerly read: “Annual report”; added the subsection (1) designation and therein, in the first sentence, deleted “Within thirty (30) days after each

annual anniversary date of an order registering subdivided lands” from the beginning and inserted “renewal,” in the second sentence, inserted “renewal,” and added the last sentence; and added subsections (2) and (3).

55-1811. General powers and duties. — (1) The commission shall have the authority to promulgate, to amend and to repeal reasonable rules for the administration and enforcement of this chapter. Such rules may include provisions for advertising standards to assure full and fair disclosure; provisions for bond, escrow or trust agreements or other means to assure that all improvements referred to in the application for registration and advertising will be completed and that purchasers will receive the interest in land for which they contracted; provisions for operating procedures; and such other rules as are necessary or proper to accomplish the purposes of this chapter.

(2) The commission may revoke a registration ordered under the provisions of this chapter, issue a cease and desist order and assess costs and attorney's fees for the cost of any investigation and administrative or other proceedings against any person who is found to have violated any section of this chapter, the commission's administrative rules or any order of the commission. If any amounts assessed against a subdivider by final order of the commission become otherwise uncollectible or payment is in default, and only if all of the defendant's rights to appeal have passed, the commission may then proceed to district court and seek to enforce collection through judgment and execution, including an action against any bond filed or escrow or trust funds deposited pursuant to section 55-1806, Idaho Code.

(3) Whenever it appears that a person has engaged or is about to engage in acts or practices that constitute or will constitute a violation of the provisions of this chapter or of a rule or order hereunder, the commission, with or without prior administrative proceedings, may bring an action in any district court to enjoin the acts or practices and to enforce compliance with this chapter or any rule or order hereunder. Upon a proper showing, a permanent or temporary injunction or restraining order may be granted.

(4) The commission may intervene in a suit involving subdivided lands. In any suit by or against a subdivider involving subdivided lands, the subdivider promptly shall furnish the commission notice of the suit and copies of all pleadings.

(5) The commission may:

(a) Accept registrations filed in other states or with the federal government;

(b) Contract with the association of real estate license law officials to use its web-based file management system to accept registrations and related filings and to reduce the registration fees for applicants who use the web-based system to file registration documents;

(c) Contract with similar agencies in this state or other jurisdictions to perform investigative functions.

(6) The commission shall cooperate with similar agencies in other jurisdictions to establish uniform filing procedures and forms, uniform public offering statements, advertising standards, rules and common administrative practices.

History.

1972, ch. 276, § 11, p. 667; am. 2010, ch. 214, § 12, p. 468.

STATUTORY NOTES

Amendments.

The 2010 amendment, by ch. 214, rewrote the section to the extent that a detailed comparison is impracticable.

Compiler's Notes.

For more on the association of real estate license law officials, see <https://www.areallo.org>.

55-1812. Fraudulent practices. — It shall be a fraudulent practice and it shall be unlawful:

(1) For any person knowingly to subscribe to or make or cause to be made

any materially false statement or representation in any application, financial statement or other document or statement required to be filed under any provision of this chapter, or to omit to state any material statement or fact in any such document or statement that is necessary in order to make the statements made, in the light of the circumstances under which they are made, not misleading;

(2) For any person, in connection with the offer or disposition of subdivided lands, directly or indirectly, to employ any device, scheme or artifice to defraud;

(3) For any person, in connection with the offer or disposition of subdivided lands, directly or indirectly, to make any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they are made, not misleading; or

(4) For any person, in connection with the offer or disposition of subdivided lands, directly or indirectly, to engage in any act, practice or course of business that operates or would operate as a fraud or deception upon purchasers or the public.

History.

1972, ch. 276, § 12, p. 667; am. 2010, ch. 214, § 13, p. 468.

STATUTORY NOTES

Cross References.

Fraudulent conveyances of land, § 55-901 et seq.

Amendments.

The 2010 amendment, by ch. 214, in sub-

section (1), substituted “materially false statement” for “material false statement” and “chapter” for “act”; and in subsections (2) through (4), deleted “or purchase” following “disposition.”

55-1813. Investigations and proceedings. — (1) The commission may investigate any subdivision offered for disposition in this state and the actions of any person who makes any offer or disposition of subdivided lands requiring registration under this chapter. In the conduct of the investigation, the commission may:

(a) Rely upon any relevant information concerning a subdivision obtained from the federal housing administration, the United States veterans administration [United States department of veterans affairs] or any other federal agency or any state agency having comparable duties in relation to subdivisions;

(b) Require the applicant to submit reports prepared by competent engineers as to any hazard to which any subdivision offered for disposition is subject or any factor that affects the utility of interests within the subdivision, and require evidence of compliance in removing or minimizing all hazards reflected in engineering reports;

(c) Require an on-site inspection of the subdivision by a person or persons designated by it. All expenses incurred in connection with an on-site inspection shall be defrayed by the applicant, and the commission shall require a deposit sufficient to defray such expenses in advance;

(d) Make public or private investigations within or outside this state to determine whether any person has violated or is about to violate the provisions of this chapter or any rule or order hereunder, or to aid in the enforcement of this chapter or in prescribing rules and forms hereunder; and

(e) Require or permit any person to file a statement in writing, under oath or otherwise as the commission determines, as to all the facts and circumstances concerning the matter to be investigated.

(2) For the purpose of any investigation or proceeding under this chapter, the commission or any person designated by it may administer oaths or affirmations, and upon its own motion or upon the request of any party the commission or any person designated by it shall have the power to administer oaths, take depositions of witnesses in and out of the state of Idaho in the manner of civil cases, require the attendance of such witnesses and the production of such books, records and papers as it may desire at any hearing before it or deposition authorized by it, pertaining in any manner to any matters of which it has authority to investigate and for that purpose the commission may issue a subpoena for any witness or a subpoena duces tecum to compel the production of any books, records or papers that shall be served and returned in the same manner as a subpoena in a civil case is returned. The fees and mileage of witnesses shall be the same as that allowed in the district courts in civil cases.

(3) The commission may permit a person registered with the commission whose conduct or actions may be under investigation to waive formal proceedings and enter into a consent proceeding whereby orders, rules or letters of censure or warning, whether formal or informal, may be entered against said person.

(4) Except as otherwise provided in this chapter, all proceedings under this chapter shall be in accordance with chapter 52, title 67, Idaho Code, and IDAPA 33.01.02, rules of practice and procedure of the Idaho real estate commission governing contested cases.

History.

1972, ch. 276, § 13, p. 667; am. 2010, ch. 214, § 14, p. 468.

STATUTORY NOTES

Cross References.

Depositions in civil cases, Idaho R. Civ. P. 27 to 32.

Subpoenas in civil cases, Idaho R. Civ. P. 45.

Witness fees and expenses, Idaho R. Civ. P. 45(e)(1).

Amendments.

The 2010 amendment, by ch. 214, rewrote the section to the extent that a detailed comparison is impracticable.

Compiler's Notes.

For more on the federal housing administration, see <http://portal.hud.gov/hudportal/HUD>.

The bracketed insertion in paragraph (1)(a) was added by the compiler to reflect the creation of the department of veterans affairs in 1989. See <http://www.va.gov>.

55-1814. Cease and desist orders. — (1) If the commission determines after notice and hearing that a person has:

- (a) Violated any provision of this chapter;
- (b) Directly or through an agent or employee knowingly engaged in any false, deceptive or misleading advertising, promotional or sales methods to offer or dispose of an interest in subdivided lands;
- (c) Made any substantial change in the plan of disposition and development of the subdivided lands subsequent to the order of registration without obtaining prior written approval from the commission;
- (d) Disposed of any subdivided lands that have not been registered with the commission; or
- (e) Violated any lawful order or rule of the commission;

it may issue an order requiring the person to cease and desist from the unlawful practice and may take such other action as authorized by this chapter.

(2) If the commission makes a finding of fact in writing that the public interest will be irreparably harmed by delay in issuing an order, such as in the case of the subdivider's failure to maintain the statutory requirements for registration, it may issue a temporary cease and desist order. Prior to issuing the temporary cease and desist order, the commission shall, whenever practicable, by telephone or otherwise, give notice of the petition for a temporary cease and desist order to the person. Every temporary cease and desist order issued shall be promptly served upon the person ordered and shall include the reasons for the order and a provision that, if requested by the person within twenty (20) days of service, the matter will be scheduled for a hearing, which will be held within a reasonable time to determine whether or not the order becomes permanent.

History.

1972, ch. 276, § 14, p. 667; am. 2010, ch. 214, § 15, p. 468.

STATUTORY NOTES

Amendments.

The 2010 amendment, by ch. 214, rewrote

the section to the extent that a detailed comparison is impracticable.

55-1815. Revocation. — (1) A registration may be revoked by the commission after notice and hearing upon a written finding of fact that the subdivider has:

- (a) Failed to maintain the requirements for continued registration;
- (b) Failed to comply with the terms of a cease and desist order;
- (c) In any court or administrative tribunal, been convicted, found liable or had a registration revoked for a crime, tort or other misconduct involving fraud, deception, false pretenses, misrepresentation, false advertising or dishonest dealing in land dispositions, including the offering or promotion of land disposition;
- (d) Disposed of, concealed or diverted any funds or assets of any person so as to defeat the rights of subdivision purchasers;
- (e) Failed faithfully to perform any stipulation or agreement made with the commission as an inducement to grant any registration, to reinstate

any registration or to approve any promotional plan or public offering statement; or

(f) Made intentional misrepresentations or concealed material facts in an application for registration.

Findings of fact, if set forth in statutory language, shall be accompanied by a concise and explicit statement of the underlying facts supporting the findings.

(2) If the commission finds after notice and hearing that the subdivider has committed a violation for which revocation could be ordered, it may issue a cease and desist order instead.

History.

1972, ch. 276, § 15, p. 667; am. 2010, ch. 214, § 16, p. 468.

STATUTORY NOTES

Amendments.

The 2010 amendment, by ch. 214, in the introductory paragraph in subsection (1), inserted "by the commission"; added paragraph (1)(a) and redesignated the subsequent paragraphs in subsection (1); rewrote present paragraph (1)(c), which read: "been convicted, or found liable in any court subsequent to the

filing of the application for registration of a crime or tort involving fraud, deception, false pretenses, misrepresentation, false advertising, or dishonest dealing in real estate transactions"; and in subsection (2), substituted "commission" for "district court" and "committed a violation" for "been guilty of a violation."

55-1816. Judicial review. — A person who has exhausted all administrative remedies available within the commission and who is aggrieved by any final decision of the commission is entitled to judicial review in accordance with chapter 52, title 67, Idaho Code.

History.

1972, ch. 276, § 16, p. 667.

55-1817. Real estate license required. — No real estate broker or salesperson shall offer or dispose of subdivided lands within or from this state, except in dispositions and transactions exempt under section 55-1805, Idaho Code, unless said real estate broker or salesperson is licensed pursuant to chapter 20, title 54, Idaho Code.

History.

1972, ch. 276, § 17, p. 667; am. 2010, ch. 214, § 17, p. 468.

STATUTORY NOTES

Amendments.

The 2010 amendment, by ch. 214, twice substituted "salesperson" for "salesman".

55-1818. Extradition. — In proceedings for extradition of a person charged with a crime under this chapter, it need not be shown that the person whose surrender is demanded has fled from justice or at the time of the commission of the crime was in the demanding or other state.

History.

1972, ch. 276, § 18, p. 667; am. 2010, ch. 214, § 18, p. 468.

STATUTORY NOTES**Amendments.**

The 2010 amendment, by ch. 214, substituted “chapter” for “act.”

55-1819. Civil remedy. — (1) Every disposition made in violation of any of the provisions of this chapter, or of any order issued by the commission under any of the provisions of this chapter, shall be voidable at the election of the purchaser. The person making such disposition, and every director, officer, salesperson or agent of or for such person who shall have participated or aided in any way in making such disposition, shall be jointly and severally liable to such purchaser in any action at law in any court of competent jurisdiction for the consideration paid for the lot, parcel, unit or interest, together with interest at the rate of six percent (6%) per year from the date of payment, property taxes and assessments paid, court costs and reasonable attorney’s fees, less the amount of any income received from the subdivided lands, upon tender of appropriate instruments of reconveyance made at any time before the entry of judgment. If the purchaser no longer owns the lot, parcel, unit or interest in subdivided lands, he may recover the amount that would be recoverable upon a tender of a reconveyance less the value of the land when disposed of and less interest at the rate of six percent (6%) per year on that amount from the date of disposition.

(2) No action shall be brought under this section for the recovery of the consideration paid after five (5) years from the date of such disposition.

(3) Any stipulation or provision purporting to bind any person acquiring subdivided lands to waive compliance with this chapter or any rule or order under it is void.

(4) The rights and remedies provided by this chapter shall be in addition to any and all other rights and remedies that may exist at law or in equity.

History.

1972, ch. 276, § 19, p. 667; am. 2010, ch. 214, § 19, p. 468.

STATUTORY NOTES**Amendments.**

The 2010 amendment, by ch. 214, throughout the section, substituted “chapter” for “act”; in the second sentence in subsection (1),

substituted “salesperson” for “salesman”; and in subsection (3), deleted “or regulation” following “rule.”

JUDICIAL DECISIONS

Cited in: *Lowe v. Lym*, 103 Idaho 259, 646 P.2d 1030 (Ct. App. 1982); *Brownlow v. Aman*, 740 F.2d 1476 (10th Cir. 1984).

55-1819A. Noncompliance — Unfair practice under the Idaho consumer protection act. — Any offer or disposition made in violation of this chapter constitutes an unfair and deceptive act or practice pursuant to chapter 6, title 48, Idaho Code.

History.

I.C., § 55-1819A, as added by 2010, ch. 214, § 20, p. 468.

55-1820. Jurisdiction. — (1) Dispositions of subdivided lands are subject to this chapter, and the district courts of this state have jurisdiction in claims or causes of action arising under this chapter if:

- (a) The subdivider's principal office is located in this state; or
- (b) Any offer or disposition of subdivided lands is made in this state, whether or not the offeror or offeree is then present in this state, if the offer originates within this state or is directed by the offeror to a person or place in this state and received by the person or at the place to which it is directed.

(2) Any person who makes a disposition of subdivided lands in this state, whether or not the subdivided lands are registered in this state, has thereby submitted to the jurisdiction of the state of Idaho and to the administrative jurisdiction of the commission and shall be subject to all penalties and remedies available under Idaho law for any violation of the provisions of this chapter.

History.

1972, ch. 276, § 20, p. 667; am. 2010, ch. 214, § 21, p. 468.

STATUTORY NOTES

Amendments.

The 2010 amendment, by ch. 214, designated the formerly undesignated first paragraph as subsection (1) and therein twice

substituted "chapter" for "act"; redesignated former subsections 1 and 2 as paragraphs (1)(a) and (1)(b); and added subsection (2).

55-1821. Service of process. — In addition to the methods of service provided for in the Idaho rules of civil procedure and Idaho statutes, service may be made on a person who has filed a consent to service of process by delivering a copy of the process to the office of the commission, but it is not effective unless the plaintiff (which may be the commission in a proceeding instituted by it):

- (1) Forthwith sends a copy of the process and of the pleading by certified or registered mail to the defendant or respondent at his last known address; and
- (2) The plaintiff's affidavit of compliance with this section is filed in the case on or before the return day of the process, if any or within such further time as the court allows.

History.

1972, ch. 276, § 21, p. 667; am. 2010, ch. 214, § 22, p. 468.

STATUTORY NOTES

Amendments.

The 2010 amendment, by ch. 214, deleted the subsection 1 designation, and redesignated former paragraphs 1.a and 1.b as subsections (1) and (2).

Compiler's Notes.

The words enclosed in parentheses so appeared in the law as enacted.

55-1822. Evidentiary matters. — (1) In any action, civil or criminal, where a defense is based upon any exemption provided for in this chapter, the burden of proving the existence of such exemption shall be upon the party raising such defense.

(2) In any action, civil or criminal, a certificate signed and sealed by the commission stating compliance or noncompliance with the provisions of this chapter shall be admissible in any such action.

History.

1972, ch. 276, § 22, p. 667; am. 2010, ch. 214, § 23, p. 468.

STATUTORY NOTES

Amendments.

The 2010 amendment, by ch. 214, twice substituted "chapter" for "act."

55-1823. Penalties. — Any person who shall willfully violate any provision of this chapter or who willfully violates any rule or order of the commission made and served upon said person pursuant to the provisions of this chapter, or who shall willfully engage in any act, practice or transaction declared by any provision of this chapter to be unlawful shall be guilty of a felony.

History.

1972, ch. 276, § 23, p. 667; am. 1972, ch.

387, § 1, p. 1118; am. 2010, ch. 214, § 24, p. 468.

STATUTORY NOTES

Cross References.

Punishment for felony not otherwise provided, § 18-112.

Amendments.

The 2010 amendment, by ch. 214, throughout the section, substituted "chapter" for "act"; and deleted "or regulation" following "rule."

Effective Dates.

Section 24 of S.L. 1972, ch. 276 provided the act should take effect on and after July 1, 1972.

Section 2 of S.L. 1972, ch. 387 provided the act should take effect on and after July 1, 1972.

CHAPTER 19

RECORDING OF SURVEYS

SECTION.

55-1901. Purpose.

55-1902. Definitions.

55-1903. Compliance with chapter required.

SECTION.

55-1904. Records of survey — When filing required.

55-1905. Records of survey — Filing.

SECTION.

55-1906. Records of survey — Contents.

55-1907. Coordinates — Basis.

55-1908. When record of survey not required.

SECTION.

55-1909. Filing fee.

55-1910. Duties of county recorder.

55-1911. Error of closure.

55-1901. Purpose. — The purpose of this chapter is to provide a method for preserving evidence of land surveys by providing for a public record of surveys. The provisions shall be deemed supplementary to existing laws relating to surveys, subdivisions, platting and boundaries.

History.

I.C., § 55-1901, as added by 1978, ch. 107,
§ 1, p. 221.

JUDICIAL DECISIONS**Illegal Subdivision of Land.**

The record before the magistrate did not support his conclusion that a criminal act occurred in 1985 because the document filed by the defendant in 1985 was a land survey and not a plat. For a subdivision to have occurred under the ordinance there must have been a division of land for the purpose of transfer of ownership for development. A land survey does not divide land, nor does the filing of such a survey indicate with what intent the landowner surveyed his property,

and because there was no support in the record for the conclusion that a criminal act occurred in 1985, the statute of limitations for the misdemeanor charges of illegal subdivision brought against the defendant had not run and the magistrate erred in dismissing the complaint. *State v. Bilbao*, 130 Idaho 500, 943 P.2d 926 (1997).

Cited in: *Robbins v. County of Blaine*, 134 Idaho 113, 996 P.2d 813 (2000).

55-1902. Definitions. — As used in this chapter:

(1) "Basis of bearing" means the bearing in degrees, minutes and seconds, or equivalent, of a line between two (2) monuments or corners which serves as the reference bearing for all other lines on the survey.

(2) "Corner" unless otherwise defined, means a property corner, or a property controlling corner, or a public land survey corner, or any combination of these.

(3) "GPS" is the abbreviation for global positioning system which is satellite surveying based on observations of the electromagnetic signals broadcast from the U.S. department of defense's NAVSTAR GPS system.

(4) "Idaho coordinate system" shall mean that system of plane coordinates as established and designated by chapter 17, title 55, Idaho Code.

(5) "Land survey" means measuring the field location of corners that:

- (a) Determine the boundary or boundaries common to two (2) or more ownerships;
- (b) Retrace or establish land boundaries;
- (c) Retrace or establish boundary lines of public roads, streets, alleys or trails; or
- (d) Plat lands and subdivisions thereof.

(6) "Monument" is a physical structure or object that occupies the exact position of a corner.

(7) "Property controlling corner" for a property is a public land survey corner, property corner, reference point or witness corner that controls the location of one (1) or more of the property corners of the property in question.

(8) "Property corner" is a geographic point on the surface of the earth, and is on, a part of, and controls a property.

(9) "Public land survey corner" is any point actually established and monumented in an original survey or resurvey that determines the boundaries of remaining public lands, or public lands patented, represented on an official plat and in the field notes thereof, accepted and approved under authority delegated by congress to the U.S. general land office and the U.S. department of interior, bureau of land management.

(10) "Reference point" means a special monumented point that does not occupy the same geographical position as the corner itself, and where the spatial relationship to the corner is known and recorded, and that serves to locate the corner.

(11) "Surveyor" shall mean every person authorized by the state of Idaho to practice the profession of land surveying.

History.

I.C., § 55-1902, as added by 1978, ch. 107,
§ 1, p. 221; am. 1997, ch. 190, § 17, p. 517;

am. 2004, ch. 83, § 1, p. 311; am. 2011, ch.
136, § 17, p. 383.

STATUTORY NOTES

Amendments.

The 2011 amendment, by ch. 136, added subsections (5) and (10), and redesignated the subsequent subsections accordingly; in subsection (7), substituted "reference point or witness corner that controls" for "which does not lie on a property line of the property in question, but which controls"; and deleted former subsection (9), which was the definition for "Survey."

Compiler's Notes.

The United States general land office, referred to in subsection (9), was created in 1812 and merged with the United States grazing service in 1946 to form the bureau of land management.

For more on the bureau of land management, see <http://www.blm.gov>.

55-1903. Compliance with chapter required. — Any surveyor legally engaged in the practice of land surveying shall comply with the provisions of this chapter.

History.

I.C., § 55-1903, as added by 1978, ch. 107,
§ 1, p. 221.

55-1904. Records of survey — When filing required. — After making a land survey in conformity with established principles of land surveying, a surveyor shall file a record of survey with the county recorder in the county or counties wherein the lands surveyed are situated. A record of survey shall be filed within ninety (90) days after completing any survey which:

- (1) Discloses a material discrepancy with previous surveys of record;
- (2) Establishes boundary lines and/or corners not previously existing or of record;
- (3) Results in the setting of monuments at corners of record which were not previously monumented;
- (4) Produces evidence or information which varies from, or is not con-

tained in, surveys of record relating to the public land survey, lost public land corners or obliterated land survey corners; or

(5) Results in the setting of monuments that conform to the requirements of section 54-1227, Idaho Code, at the corners of an easement or lease area.

History.

I.C., § 55-1904, as added by 1978, ch. 107, § 1, p. 221; am. 2006, ch. 136, § 1, p. 391; am. 2011, ch. 136, § 18, p. 383.

STATUTORY NOTES

Cross References.

Corner perpetuation and filing act, § 55-1601 et seq.

County recorders, § 31-2401 et seq.

present subsection (3) and redesignated former subsection (3) as present subsection (4).

The 2011 amendment, by ch. 136, inserted the first occurrence of "land" in the introductory paragraph and added subsection (5).

Amendments.

The 2006 amendment, by ch. 136, added

55-1905. Records of survey — Filing. — The records of survey to be filed under authority of this chapter shall be processed as follows:

(1) The record of survey shall be a map, prepared in black opaque image upon stable base drafting film with a minimum base thickness of .003 inches by either a photographic process using a silver image emulsion or by use of black opaque drafting film ink, by mechanical or handwritten means. The drafting film and image thereon shall be waterproof, tear resistant, flexible and capable of withstanding repeated handling, as well as providing archival permanence. If ink is used on drafting film, the ink surface shall be coated with a suitable substance to assure permanent legibility. The drafting film must be of a type which can be reproduced by either a photographic or diazo process. The map shall be eighteen (18) inches by twenty-seven (27) inches in size, with a three and one-half (3 1/2) inch margin at the left end for binding, and a one-half (1/2) inch margin on all other edges. No part of the drawing or certificates shall encroach upon the margins. Signatures shall be in reproducible black ink. The sheet or sheets which contain the drawing or diagram representing the survey shall be drawn at a scale suitable to insure the clarity of all lines, bearings and dimensions. In the event that any survey is of such magnitude that the drawing or diagram cannot be placed on a single sheet, serially numbered sheets shall be prepared and match lines shall be indicated on the drawing or diagram with appropriate references to other sheets.

(2) The original transparency and one (1) legible print of each record of survey shall be furnished to the county recorder in the county or counties in which the survey is to be recorded.

History.

I.C., § 55-1905, as added by 1978, ch. 107, § 1, p. 221; am. 1997, ch. 190, § 18, p. 517.

55-1906. Records of survey — Contents. — The records of survey shall show:

(1) All monuments found or set or reset or replaced, or removed, describ-

ing their kind, size, location using bearings and distances, and giving other data relating thereto;

(2) Evidence of compliance with chapter 16, title 55, Idaho Code, including instrument numbers of any corner records which have been recorded previously and corner records of any corners which are set in conjunction with the survey being submitted; basis of bearings, bearing and length of lines, scale of map, and north arrow;

(3) Section, or part of section, township and range in which the survey is located and reference to surveys of record within or crossing or adjoining the survey;

(4) Certificate of survey;

(5) Ties to at least two (2) public land survey corner monuments of record in one (1) or more of the sections containing the record of survey, or in lieu of public land survey corners, to two (2) corners of records recognized by the county surveyor. Records of survey which are within previously platted subdivisions of record need not be tied to public land survey corner monuments.

History.

§ 1, p. 221; am. 1997, ch. 190, § 19, p. 517;
I.C., § 55-1906, as added by 1978, ch. 107, am. 2004, ch. 83, § 2, p. 311.

55-1907. Coordinates — Basis. — When coordinates in the Idaho coordinate system are shown on a record of survey map, subdivision plat or a highway right-of-way plat, the map or the plat must show the national spatial reference system monuments and their coordinates used as the basis of the survey; the zone; the datum and adjustment; and the combined adjustment factor and the convergence angle and the location where they were computed.

History.

§ 1, p. 221; am. 1997, ch. 190, § 20, p. 517;
I.C., § 55-1907, as added by 1978, ch. 107, am. 2010, ch. 256, § 11, p. 649.

STATUTORY NOTES

Amendments.

The 2010 amendment, by ch. 256, rewrote the section, revising requirements relating to coordinates shown on certain maps and plats.

55-1908. When record of survey not required. — A record of survey is not required of any survey when:

(1) It is of a preliminary nature;

(2) A map is in preparation for recording or has been recorded under any other section of the Idaho Code, or pursuant to the laws of the United States;

(3) A survey is performed for a mineral claim location, amendment or relocation; or

(4) None of the conditions contained in section 55-1904, Idaho Code, exist and the principal purpose of the survey is to depict information other than the points of lines that define boundaries including, but not limited to, topographic surveys and construction surveys, staking and layout.

History.

I.C., § 55-1908, as added by 1978, ch. 107,
§ 1, p. 221; am. 2011, ch. 136, § 19, p. 383.

STATUTORY NOTES**Amendments.**

The 2011 amendment, by ch. 136, added
subsection (4).

55-1909. Filing fee. — A fee of five dollars (\$5.00) per page shall be charged for filing any record of survey.

History.

I.C., § 55-1909, as added by 1978, ch. 107,
§ 1, p. 221; am. 1979, ch. 289, § 1, p. 768.

55-1910. Duties of county recorder. — The record of survey filed with the county recorder of any county shall be assigned an instrument number and shall be bound or filed with other plats of like character in a book or file or through an approved electronic storage system designated as "Records of Surveys."

Proper indexes or electronic segregated searchable and retrieval files shall be kept of such record of survey by section, township and range.

The survey map transparency shall be stored for safekeeping in a reproducible condition. It shall be proper for the recorder to maintain for public reference a set of counter maps that are prints of the transparencies. The transparencies shall be produced for comparison upon demand, and full scale copies shall be made available to the public, at direct cost, by the county recorder.

History.

I.C., § 55-1910, as added by 1978, ch. 107,
§ 1, p. 221; am. 2005, ch. 243, § 10, p. 756.

55-1911. Error of closure. — Any survey of land involving property boundaries including, but not limited to, public land survey lines, shall be conducted in such a manner as to produce an unadjusted mathematical error of closure of each area bounded by property lines within the survey of not more than one (1) part in five thousand (5,000).

History.

I.C., § 55-1911, as added by 1984, ch. 263,
§ 1, p. 637; am. 2011, ch. 136, § 20, p. 383.

STATUTORY NOTES**Amendments.**

The 2011 amendment, by ch. 136, inserted
"each area bounded by property lines within

the survey of" and substituted "not more than
one" for "not less than one."

CHAPTER 20

MANUFACTURED HOME RESIDENCY ACT

SECTION.

- 55-2001. Short title.
- 55-2002. Good faith.
- 55-2003. Definitions.
- 55-2004. Chapter governs.
- 55-2005. Rental agreement.
- 55-2006. Adjustments to rent, services, utilities or rules.
- 55-2007. Required rental agreement provisions and exclusions — Disclosures.
- 55-2008. Rules.
- 55-2009. Sales of homes and transfer of lots.
- 55-2009A. Notice of lienholder — Limit on back rent — Abandonment.
- 55-2009B. Sale to satisfy liens.
- 55-2009C. Notice of sale.
- 55-2009D. Release of owner's interest in abandoned home.

SECTION.

- 55-2009E. Inspection prior to sale.
- 55-2009F. Disposition of proceeds.
- 55-2010. Terminations.
- 55-2011. Renewals.
- 55-2012. Improvements.
- 55-2013. Deposits — Security.
- 55-2013A. Community resident associations.
- 55-2014. Resident action for damages — Specific performance.
- 55-2015. Retaliatory conduct by landlord prohibited.
- 55-2016. Arbitration and mediation.
- 55-2017. Penalties.
- 55-2018. Attorney's fees.
- 55-2019. Venue.
- 55-2020. Service of notice.

55-2001. Short title. — This chapter shall be known as and may be cited as the “Manufactured Home Residency Act.”

History.

I.C., § 55-2001, as added by 1980, ch. 177, § 1, p. 375; am. 2011, ch. 184, § 2, p. 523.

STATUTORY NOTES

Amendments.

The 2011 amendment, by ch. 184, substituted “Manufactured Home Residency Act”

for “Mobile Home Park Landlord Tenant Act”.

RESEARCH REFERENCES

A.L.R. — Liability of owner or operator of park for mobile home or trailers for injuries caused by appliances or other instruments on premises. 41 A.L.R.3d 324.

Liability of owner or operator of trailer camp or park for injury or death from condition of premises. 41 A.L.R.3d 546.

Landlord supplying electricity, gas, water, or similar facilities to tenant as subject to utility regulation. 75 A.L.R.3d 1204.

Landlord's fraud, deceptive trade practices, and the like, in connection with mobile home owner's lease or rental of land site. 39 A.L.R.4th 859.

Landlord's liability to third person for injury resulting from attack on leased premises by dangerous animal kept by tenant. 87 A.L.R.4th 1004.

55-2002. Good faith. — Every duty under this chapter and every act which must be performed as a condition precedent to the exercise of a right or remedy under this chapter imposes an obligation of good faith in its performance or enforcement.

History.

I.C., § 55-2002, as added by 1980, ch. 177, § 1, p. 375.

JUDICIAL DECISIONS**ANALYSIS**

Nonwritten rental agreements.
Prerequisite to benefits.

Nonwritten Rental Agreements.

In order to give force and effect to the requirement of a written rental agreement in the case of mobile home parks, nonwritten rental agreements, including implied at-law contracts, are unenforceable. *Fuhrman v. Wright*, 125 Idaho 421, 871 P.2d 838 (Ct. App. 1994).

parties is a prerequisite to claiming benefits under this chapter but this chapter does not require a tenant to sign the agreement within the time allotted by the landlord; instead it imposes a duty of good faith upon the tenant and the landlord to sign a written rental agreement. *Post Falls Trailer Park v. Fredekind*, 131 Idaho 634, 962 P.2d 1018 (1998).

Prerequisite to Benefits.

A written rental agreement signed by both

55-2003. Definitions. — For purposes of this chapter, unless the provisions or context otherwise requires, the following definitions shall govern:

- (1) "Abandoned home" means a home that:
 - (a) Is located in a community on a lot for which no rent has been paid for the preceding sixty (60) days; and
 - (b) The landlord reasonably believes under all the circumstances, by absence, words or actions, that the resident has left the home upon the lot with no intention of asserting any further claim to the lot or the home; or
 - (c) Is unoccupied or uninhabitable because of its total or partial destruction.
- (2) "Community" means any real property that is rented or held out for rent to others for the placement of two (2) or more homes for the primary purpose of production of income.
- (3) "Department" means the Idaho department of transportation.
- (4) "Fees" means financial obligations incidental to a resident's tenancy including, but not limited to, charges for late payments, pets, the storage of recreational vehicles and the use of community facilities.
- (5) "Home" means a mobile home, a manufactured home or a park model.
- (6) "Landlord" means the owner, lessor, sublessor or operator, or any combination thereof, of a community and includes the agents of the landlord.
- (7) "Lot" means a specific area or portion of land in a community for rent, designated and designed to accommodate one (1) home and its appurtenances and intended for the exclusive use as a residence by the approved occupants of that home.
- (8) "Manager" means the person in charge of operations or in control of a community, whether or not he or she is the owner. "Manager" includes any company chosen by the landlord to administer or supervise the affairs of the community.
- (9) "Manufactured home" or "manufactured house" means a structure as defined in subsection (8) of section 39-4105, Idaho Code.
- (10) "Mobile home" means a structure as defined in subsection (9) of section 39-4105, Idaho Code.

(11) “Park model” means a vehicular type unit that has a floor area of four hundred (400) square feet or less, meets the American national standards institute (ANSI) recreational standard A119.5, is primarily designed for permanent or semipermanent installation and is used as a residence.

(12) “Other charges” means fees, service charges, utility charges or any other financial obligations specified in the rental agreement, but not including rent.

(13) “Recreational vehicle” means a vehicular type unit as defined in subsection (2) of section 39-4201, Idaho Code.

(14) “Rent” means periodic payments to be made in consideration for occupying a lot.

(15) “Rental agreement” means a lease or agreement between the landlord and the resident embodying the terms and conditions concerning the use and occupancy of a lot and includes month to month tenancies that arise out of the expiration of a fixed term rental agreement.

(16) “Resident” means a person lawfully entitled under a rental agreement or lease to occupy a lot in a community to the exclusion of others. “Resident” also means a tenant as that term is defined and used in other applicable state and federal laws.

(17) “Security” or “security deposit” means any refundable money or property given to assure payment or performance under a rental agreement.

(18) “Service charges” means separate charges paid for the use of electrical and gas service improvements that exist at a lot, or for trash removal, sewage and water, or any combination of the foregoing.

(19) “Transient” means a person who rents a lot for a period of less than one (1) month.

(20) “Utility” means a public utility that provides electricity, natural gas, liquefied petroleum gas, cable television, sewer services, garbage collection or water.

History. § 1, p. 375; am. 1988, ch. 196, § 1, p. 369; am. I.C., § 55-2003, as added by 1980, ch. 177, 2011, ch. 184, § 3, p. 523.

STATUTORY NOTES

Cross References. the section to the extent that a detailed comparison is impracticable.
Department of transportation, § 40-501 et seq.

Amendments. **Compiler’s Notes.**
The 2011 amendment, by ch. 184, rewrote The abbreviation enclosed in parentheses so appeared in the law as enacted.

55-2004. Chapter governs. — This chapter shall regulate and determine legal rights, remedies and obligations arising from any rental agreement between a landlord and a resident regarding a lot, except in those instances in which: (i) the landlord is renting both the lot and the home to the resident; or (ii) the lot is rented or held out for rent to a recreational vehicle or travel trailer, not including a park model. All such rental agreements shall be unenforceable to the extent of any conflict with any provision of this chapter. This chapter does not abrogate any rights the

landlord or resident has under the laws and constitution of the United States or the state of Idaho.

History.

I.C., § 55-2004, as added by 1980, ch. 177, § 1, p. 375; am. 1988, ch. 196, § 2, p. 369; am. 2011, ch. 184, § 4, p. 523.

STATUTORY NOTES

Amendments.

The 2011 amendment, by ch. 184, in the first sentence, substituted “resident regarding a lot” for “tenant regarding a mobile home lot,” added the clause (i) designation, and

substituted “home to the resident” for “mobile home to the tenant,” and added clause (ii); and, in the last sentence, substituted “landlord or resident” for “park owner or tenant.”

JUDICIAL DECISIONS

Nonwritten Rental Agreements.

In order to give force and effect to the requirement of a written rental agreement in the case of mobile home parks, nonwritten rental agreements, including implied at-law-contracts, are unenforceable. *Fuhrman v. Wright*, 125 Idaho 421, 871 P.2d 838 (Ct. App. 1994).

Cited in: *Post Falls Trailer Park v. Fredekind*, 131 Idaho 634, 962 P.2d 1018 (1998); *Connolly v. Powell*, 141 Idaho 844, 118 P.3d 1232 (Ct. App. 2005).

55-2005. Rental agreement. — (1) A written rental agreement or lease shall be executed in duplicate by the landlord and the prospective resident, each to receive a copy. The landlord shall provide a copy of the community rules when the prospective resident submits an application for residency and prior to the execution of the rental agreement. The provisions of this chapter shall apply to all such agreements and to all other rental agreements to the extent applicable as set forth in this chapter.

(2) The requirement of subsection (1) of this section shall not apply if:

(a) The community or part thereof has been acquired by eminent domain or condemnation for a public works project; or

(b) An employer-employee relationship exists between a landlord and resident.

(3) The provisions of this section shall apply to any tenancy in existence on the effective date of this act, but only after expiration of the term of any oral or written rental agreement governing such tenancy, not to exceed twelve (12) months from the date of enactment of this section. Existing contracts may be perpetuated by agreement of both parties. If a resident fails to sign and return to the landlord, who has acted in good faith, any new or amended rental agreement following the written notice provided in accordance with the provisions of section 55-2006, Idaho Code, and the resident continues to hold the premises after the expiration of the notice period, then the notice shall of itself operate and be effectual to create and establish, as part of the rental agreement, the terms, rent, conditions and rules specified in the notice.

History.

I.C., § 55-2005, as added by 1980, ch. 177, § 1, p. 375; am. 1988, ch. 196, § 3, p. 369; am. 2011, ch. 184, § 5, p. 523.

STATUTORY NOTES

Amendments.

The 2011 amendment, by ch. 184, rewrote the first two sentences in subsection (1), which formerly read: "From and after the effective date of this chapter, any landlord offering mobile home lot for rent shall provide the prospective tenant a written rental agreement. This agreement must be executed by both parties"; substituted "community" for "mobile home park" at the beginning of paragraph (2)(a); substituted "resident" for "tenant" at the end of paragraph (2)(b); and added the last sentence in subsection (3).

Compiler's Notes.

The phrase "the effective date of this act" in subsection (3) refers to the effective date of S.L. 1980, ch. 177, which was July 1, 1980.

The phrase "the date of the enactment of this section" in subsection (3) was added to the section by S.L. 1988, ch. 185, § 5, but probably refers to the original enactment of this section by S.L. 1980, ch. 177, effective July 1, 1980.

JUDICIAL DECISIONS

ANALYSIS

Landlord's duty.

Nonwritten rental agreements.

Prerequisite to benefits.

Landlord's Duty.

The landlord's duty is not complete once it provides a tenant with a written rental agreement; this chapter clearly requires the rental agreement be executed by both parties. *Post Falls Trailer Park v. Fredekind*, 131 Idaho 634, 962 P.2d 1018 (1998).

Nonwritten Rental Agreements.

In order to give force and effect to the requirement of a written rental agreement in the case of mobile home parks, nonwritten rental agreements, including implied at-law-contracts, are unenforceable. *Fuhrman v. Wright*, 125 Idaho 421, 871 P.2d 838 (Ct. App. 1994).

Prerequisite to Benefits.

A written rental agreement signed by both parties is a prerequisite to claiming benefits under this chapter but this chapter does not require a tenant to sign the agreement within the time allotted by the landlord; instead it imposes a duty of good faith upon the tenant and the landlord to sign a written rental agreement. *Post Falls Trailer Park v. Fredekind*, 131 Idaho 634, 962 P.2d 1018 (1998).

Cited in: *Connolly v. Powell*, 141 Idaho 844, 118 P.3d 1232 (Ct. App. 2005).

55-2006. Adjustments to rent, services, utilities or rules. — (1) A landlord may increase or decrease rents after expiration of the lease term, but only with ninety (90) days' written notice to the residents. Such written notice shall be sent by first class mail, certified mail or personal delivery.

(2) Rental increases shall be uniform throughout the community. When rents within a community are structured by reason of lot or home size, amenities, lot location or otherwise, rental increases shall be uniform among all homes in the same rent tier.

(3) A landlord shall give written notice of such change to each affected home owner at least ninety (90) days prior to any amendment to the rental agreement. The landlord may not amend the rental agreement or rules more frequently than once in a six (6) month period.

(4) Rents in communities are governed by the provisions of subsection (2) of section 55-307, Idaho Code, which provides that a local governmental unit shall not enact, maintain, or enforce an ordinance or resolution that would have the effect of controlling the amount of rent charged for leasing private residential property.

(5) Notwithstanding the foregoing provisions, a rental agreement may include an escalation clause for a pro rata share of any increase or decrease in the community's ad valorem taxes, utility assessments, or other services as included in the monthly rental charge, after the effective date of such a change. Issues of public safety, health or property degradation may also be included in this section. The landlord shall give thirty (30) days' written notice to a resident before such an increase or decrease.

History.

I.C., § 55-2006, as added by 1980, ch. 177, § 1, p. 375; am. 1988, ch. 196, § 4, p. 369; am.

1993, ch. 380, § 1, p. 1394; am. 2011, ch. 184, § 6, p. 523.

STATUTORY NOTES**Amendments.**

The 2011 amendment, by ch. 184, in subsection (1), in the first sentence, inserted "after expiration of the lease term, but" and substituted "with ninety (90) days' written notice to the residents" for "after ninety (90) days' written notice to the tenants," and added the last sentence; in subsection (2), twice substituted "community" for "mobile home park"; rewrote subsection (3), which formerly read: "A landlord shall give written notice of such change to each affected mobile

home owner at least ninety (90) days prior to any increase in lot rental amount, reduction in services or utilities provided by the landlord or changes in rules or regulations not to exceed one (1) change in each category per six (6) month period"; added subsection (4); and redesignated former subsection (4) as subsection (5), and therein substituted "community's ad valorem taxes" for "mobile home park's ad valorem taxes" in the first sentence and substituted "resident" for "tenant" in the last sentence.

JUDICIAL DECISIONS

Cited in: *Fuhrman v. Wright*, 125 Idaho 421, 871 P.2d 838 (Ct. App. 1994).

55-2007. Required rental agreement provisions and exclusions — Disclosures. — (1) Any rental agreement executed between the landlord and resident shall contain:

- (a) The terms for the payment of rent, including the time and place for payment, and a description of any other charges to be paid to the landlord by the resident. Other charges that occur less frequently than monthly shall be itemized in a billing to the resident;
- (b) A description of the utilities and services which are included in the monthly rent;
- (c) The rules of the community;
- (d) The names and addresses of the manager of the community and the owner of the community or a person who resides in the state who is authorized to act as agent for the owner; and
- (e) The terms and conditions under which any deposit or portion thereof may be withheld by the landlord upon termination of the rental agreement if any moneys are paid to the landlord by the resident as a deposit or as security for performance of the resident's obligations in a rental agreement.

(2) Any rental agreement executed between the landlord and resident shall not contain:

- (a) Any provision by which the resident agrees to waive or forego [forgo] rights or remedies under this chapter; or
- (b) Any provision allowing the landlord to charge an “entrance fee” or an “exit fee.” The expense of repairs or maintenance required by the landlord as a condition of the landlord’s approval of a rental application shall not constitute an “entrance fee” or “exit fee” as those terms are used herein.
- (c) Any provision which unreasonably restricts access to the community by invitees of the resident.
- (3) The following terms and conditions shall be an implicit part of any rental agreement between the landlord and resident:
 - (a) The landlord shall provide a base upon which the home is to be located, prepared in accordance with the provisions of section 44-2201, Idaho Code.
 - (b) The landlord shall, prior to removal of the wheels and axles, approve the positioning of the home upon the lot.
 - (c) The landlord shall not permit any portion of the home, including the tongue, to extend into a roadway.
 - (d) The landlord shall maintain street lights, entry lights and common area lighting, if any, in good working condition.
 - (e) The landlord shall have the right of entry upon the lot for maintenance of utilities, protection of the community and periodic inspection of the premises, but shall not, except in the case of emergency or suspected abandonment by the resident, otherwise have the right of entry to such lot without the consent of the resident.
 - (f) The landlord shall notify each resident within fifteen (15) days after a petition has been filed by the landlord for a change in the zoning of the land upon which the community is situated.
- (4) Upon request, the landlord shall, prior to the execution of a rental agreement, provide the resident with a written statement containing the following information:
 - (a) The name, address and telephone number of the owner or manager of the community.
 - (b) A general description of the types of homes which may be brought into the community.
 - (c) A general description of the boundaries of the lot to be provided.
 - (d) A description of the utilities and services which are included in the rent.
 - (e) A description of other utilities and services which are available within the community.
 - (f) A description of the zoning under which the community operates, and the governmental entity having zoning jurisdiction.
 - (g) The date and amount of the most recent rent increase.

History.

I.C., § 55-2007, as added by 1980, ch. 177, § 7, p. 523.
1993, ch. 380, § 2, p. 1394; am. 2011, ch. 184, § 1, p. 375; am. 1988, ch. 196, § 5, p. 369; am.

STATUTORY NOTES

Amendments.

The 2011 amendment, by ch. 184, inserted “rental agreement” in the section heading; throughout the section, substituted “resident” for “tenant” and “community” for “mobile home park,” or similar language; in paragraph (1)(d), deleted “where the mobile home park is located” following “state”; in paragraphs (3)(a) through (3)(c), deleted “mobile”

preceding “home”; and in paragraphs (3)(b) and (3)(e), deleted “mobile home” preceding “lot.”

Compiler’s Notes.

The bracketed insertion in the paragraph (2)(a) was added by the compiler to provide the probable intended word.

JUDICIAL DECISIONS

Written Rental Agreement.

Rental agreement terms, required by this section, were not allowed to be provided by supplemental oral agreements; the landlord did not satisfy his burden of showing, as an

essential element of his eviction claim, a valid written rental agreement in compliance with the provisions of this chapter. *Connolly v. Powell*, 141 Idaho 844, 118 P.3d 1232 (Ct. App. 2005).

55-2008. Rules. — (1) A written rule of the community is enforceable against the resident if it is part of the rental agreement signed by the resident.

(2) A rule adopted or amended after the resident enters into the rental agreement is not enforceable unless the resident consents to it or is given ninety (90) days’ notice in writing except as provided in section 55-2006(5), Idaho Code. A rule change restricting the type or size of a home permitted in the community shall not apply to a resident whose home was in compliance with community rules prior to the adoption or amendment.

(3) Rules shall be fairly and uniformly enforced and contain the effective date.

History.

I.C., § 55-2008, as added by 1980, ch. 177, § 1, p. 375; am. 1988, ch. 196, § 6, p. 369; am.

2010, ch. 168, § 1, p. 344; am. 2011, ch. 184, § 8, p. 523.

STATUTORY NOTES

Amendments.

The 2010 amendment, by ch. 168, added the subsection designations; and added the last sentence in subsection (2).

The 2011 amendment, by ch. 184, through-

out the section, substituted “community” for “park” and “resident” for “tenant”; and, in subsection (2), updated the section reference in the first sentence and deleted “mobile” preceding “home” in the last sentence.

JUDICIAL DECISIONS

Cited in: *Fuhrman v. Wright*, 125 Idaho 421, 871 P.2d 838 (Ct. App. 1994).

55-2009. Sales of homes and transfer of lots. — (1) No landlord shall deny any resident who owns his home the right to sell the home on a rented lot or require the resident to remove the home from the lot solely on the basis of the sale.

(2) The landlord shall not exact a commission or fee for the sale of a home on a rented space unless the landlord has acted as agent for the seller

pursuant to a written agreement. The landlord may act as agent for the seller only upon the voluntary agreement of the seller and only if the landlord is licensed if licensure is required by law.

(3) A new rental agreement must be signed between the landlord and a prospective resident prior to the sale, transfer, assignment or subletting of the home if the home is to remain in the community. From the date of sale, assignment, transfer or subletting the new resident shall be bound by the terms of the agreement.

(4) The landlord shall approve or disapprove of the transfer, assignment or subletting of the home lot on the same basis that the landlord approves or disapproves of any new resident. Notice of approval or disapproval shall be given in writing within five (5) working days of receiving a written application.

(5) No home shall be removed from any community until the rent, including the month when the home is moved, together with all other charges specified in the rental agreement, are paid, or the provisions of section 55-2009A, Idaho Code, have been fully complied with and the landlord notified of date and time of removal.

History.

I.C., § 55-2009, as added by 1980, ch. 177,
§ 1, p. 375; am. 1981, ch. 207, § 1, p. 372; am.

1988, ch. 196, § 7, p. 369; am. 2011, ch. 184,
§ 9, p. 523.

STATUTORY NOTES

Amendments.

The 2011 amendment, by ch. 184, in the section heading, deleted “mobile” preceding “homes” and substituted “lots” for “mobile home spaces”; throughout the section, substituted “resident” for “tenant” or similar language and deleted “mobile” preceding “home”; throughout subsections (1) and (4), substi-

tuted “lot” for “space”; in the last sentence in subsection (2), added “and only if the landlord is licensed if licensure is required by law”; in subsections (3) and (5), substituted “community” for “park”; and, in subsection (5), substituted “rent” for “rental payments” and inserted “together with all other charges specified in the rental agreement.”

55-2009A. Notice of lienholder — Limit on back rent — Abandonment. — (1) Any lienholder or legal owner of a home who wants to be protected under this section must so notify the landlord in writing of his secured or legal interest.

(2) If the resident becomes sixty (60) days in arrears in his rent or at the time of suspected abandonment by the resident on a lot, it is incumbent upon the landlord to notify in writing the lienholder and legal owner of the home and to communicate to the lienholder and legal owner the liability for any rent and other charges specified in the rental agreement. The lienholder shall be responsible for utilities from the date of notice. However, the landlord shall be entitled to a maximum of sixty (60) days rent due prior to notice to lienholder. Any and all costs shall then become the responsibility of the legal owner or lienholder of the home. The home may not be removed from the lot without a signed written agreement from the landlord or manager showing clearance for removal, showing all moneys due and owing paid in full, or an agreement reached with the legal owner and the landlord.

History.

I.C., § 55-2009A, as added by 1981, ch. 207, § 2, p. 372; am. 2011, ch. 184, § 10, p. 523.

STATUTORY NOTES**Amendments.**

The 2011 amendment, by ch. 184, added "Abandonment" in the section heading; in subsection (1), deleted "mobile" preceding "home"; in subsection (2), in the first sentence, twice substituted "resident" for "tenant" and substituted "lot" for "mobile home space" and substituted "notify in writing the lienholder and legal owner of the home and to communicate to the lienholder and legal owner the liability for any rent and other charges specified in the rental agreement" for "notify the

lienholder or legal owner of the mobile home unit and to communicate to him his liability for any costs incurred for the mobile home space for such mobile home unit, including rent owing," in the third sentence, deleted "mobile" preceding "home," and, in the last sentence, substituted "home" for "mobile home unit" and "lot" for "mobile home space" and deleted "mobile home park" preceding "landlord" and "owner" preceding "or manager."

55-2009B. Sale to satisfy liens. — (1) When a home has been abandoned, the landlord, as the possessory lienholder, may proceed to conduct a sale of the abandoned home to satisfy the lien and costs of sale, if an authorization to conduct a lien sale has been issued by the department or a judgment has been entered in favor of the landlord on the claim which gives rise to the lien or the legal owner of the home and any lienholder have signed a release of any interest in the home.

(2) A possessory lienholder may apply to the department for the issuance of an authorization to conduct a lien sale. The application shall include all of the following information:

- (a) A description of the abandoned home including the year and make and the vehicle identification number;
- (b) The names and addresses of the legal owners of the abandoned home, if known, and the names and addresses of other persons whom the lienholder knows or reasonably should know to claim an interest in the home;
- (c) A statement of the amount of the lien and the facts concerning the claim that give rise to the lien; and
- (d) A statement that the lienholder has no information or belief that there is a valid defense to the claim that gives rise to the lien.

(3) Upon receipt of an application, the department shall send a copy of the application to the legal owners at their addresses of record with the department and to any other interested persons listed in the application. The department shall also send a notice which shall include the following information:

- (a) That an application has been made with the department for the issuance of an authorization to conduct a lien sale;
- (b) That the person has a legal right to a hearing in court;
- (c) That if a hearing in court is desired, an enclosed declaration of opposition must be signed and returned;
- (d) That if the declaration is signed and returned, the possessory lienholder will be allowed to sell the abandoned home only if he obtains a judgment in court or obtains a release from the legal owners;

- (e) That the department will issue the authorization to conduct a lien sale unless the person signs and returns the declaration of opposition within ten (10) days after the date the notice was mailed; and
 - (f) That the person may be liable for costs if the lienholder brings an action and if a judgment is entered in favor of the lienholder.
- (4) If the department receives a timely mailed declaration of opposition, it shall notify the possessory lienholder that he or she may not conduct a lien sale unless:
- (a) A judgment has been entered in his or her favor on the claim which gives rise to the lien; or
 - (b) The legal owners of the abandoned home have signed a release of any interest in the home.
- (5) An applicant shall include with his application for lien sale a fee of ten dollars (\$10.00), which shall be deposited in the abandoned vehicle trust account. The fee shall be recoverable as a cost by the lienholder.

History.

I.C., § 55-2009B, as added by 2011, ch. 184,
§ 11, p. 523.

STATUTORY NOTES**Cross References.**

Abandoned vehicle trust account, § 49-1818.

55-2009C. Notice of sale. — Prior to any sale pursuant to the provisions of section 55-2009B, Idaho Code, the possessory lienholder shall give at least ten (10) days' notice of the sale by advertising in one (1) issue of a newspaper of general circulation in the county in which the abandoned home is located. Prior to the sale of any home to satisfy a lien, twenty (20) days' notice by certified mail shall be given to the legal owner and to the department. All notices shall specify the make, the vehicle identification number and the date, time and place of the sale.

History.

I.C., § 55-2009C, as added by 2011, ch. 184,
§ 12, p. 523.

55-2009D. Release of owner's interest in abandoned home. — (1) A legal owner of an abandoned home in the possession of a person holding a lien under the provisions of this chapter may release any interest in the home after the lien has attached.

(2) The release shall contain the following information:

- (a) A description of the abandoned home, including the year, make and vehicle identification number;
- (b) The names and addresses of the legal owners of record;
- (c) A statement of the amount of the lien and the facts concerning the claim which give rise to the lien; and
- (d) A statement that the person releasing the interest understands that

he or she has a legal right to a hearing in court prior to the sale of the abandoned home and that he or she waives the right to contest the claim.

(3) A copy of the release shall be filed with the department in connection with the transfer of interest in an abandoned home under the provisions of this section.

History.

I.C., § 55-2009D, as added by 2011, ch. 184,
§ 13, p. 523.

55-2009E. Inspection prior to sale. — No lien sale conducted pursuant to this chapter shall be undertaken unless the landlord has permitted access for public inspection of the exterior of the abandoned home for at least one (1) hour prior to the sale. Sealed bids shall not be accepted. The possessory lienholder shall conduct the sale in a commercially reasonable manner.

History.

I.C., § 55-2009E, as added by 2011, ch. 184,
§ 14, p. 523.

55-2009F. Disposition of proceeds. — (1) The proceeds of a lien sale shall be disbursed as follows:

- (a) To discharge the lien; then to actual costs of selling the property. The cost of selling shall be the actual cost, not to exceed two hundred dollars (\$200), for each abandoned home;
- (b) The balance, if any, shall be forwarded to the department within five (5) days of the sale for payment to the legal owner of any unpaid obligation or for deposit in the abandoned vehicle trust account.

(2) Any person claiming an interest in the abandoned home may file a claim with the department for any portion of the funds from the lien sale that were forwarded to the department. Upon determination by the department that the claimant is entitled to some amount, the department shall pay an amount that in no case shall exceed the amount forwarded to the department in connection with the sale of the abandoned home. The department shall not honor any claim not filed within two (2) years of the sale.

History.

I.C., § 55-2009F, as added by 2011, ch. 184,
§ 15, p. 523.

STATUTORY NOTES

Cross References.

Abandoned vehicle trust account, § 49-1818.

55-2010. Terminations. — (1) Tenancy during the term of a rental agreement may be terminated by the landlord only for one (1) or more of the following reasons:

- (a) Substantial or repeated violation of the rental agreement or the

written rules of the community. The resident shall be given written notice to comply. If the resident does not comply within three (3) days, the resident may be given notice of a twenty (20) day period in which to vacate. In the case of periodic rather than continuous violation, said notice shall specify that the same violation repeated shall result in the termination.

(b) Nonpayment of rent or other charges specified in the rental agreement. The resident shall be given written notice. If the resident does not pay within three (3) days the resident may be given notice of a thirty (30) day period in which to vacate.

(c) Closure of the community or any portion thereof by order of a federal, state or local authority. The resident shall be given the notice required by such order.

(d) In the event of a taking of the community or any portion thereof by eminent domain or cessation of the lot rental operation or a portion thereof, the landlord shall give the affected resident and any subtenant not less than one hundred eighty (180) days' notice in writing prior to the date designated in the notice of termination. After the date notice of termination has been given as provided in this subsection, the landlord shall provide a copy of such notice to any prospective resident or purchaser if the home is to remain in the community. The landlord may not increase the rent during the notice period. This section does not limit a landlord's right to terminate a tenancy for nonpayment of rent or for other causes under this chapter during the closure period.

(e) Abandonment.

(2) Except when a rental agreement is terminated for the reason provided in paragraph (e) of subsection (1) of this section, a landlord shall give the resident no less than ninety (90) days' written notice of an intention not to renew the rental agreement.

(3) A resident shall notify the landlord in writing thirty (30) days prior to the expiration of a rental agreement of an intention not to renew the rental agreement.

(4) Any resident who is a member of the armed forces, including the national guard and armed forces reserves, may, without penalty, terminate a rental agreement with less than thirty (30) days' notice if he receives reassignment or deployment orders which do not allow greater notice.

(5) The resident may terminate the rental agreement upon thirty (30) days' written notice whenever a change in the location of the resident's employment requires a change in his residence.

History.

I.C., § 55-2010, as added by 1980, ch. 177,
§ 1, p. 375; am. 1988, ch. 196, § 8, p. 369; am.

2004, ch. 276, § 1, p. 766; am. 2011, ch. 184,
§ 16, p. 523.

STATUTORY NOTES

Amendments.

The 2011 amendment, by ch. 184, rewrote the section, revising and providing additional

provisions relating to the termination of a rental agreement.

JUDICIAL DECISIONS

Cited in: Fuhrman v. Wright, 125 Idaho 421, 871 P.2d 838 (Ct. App. 1994).

55-2011. Renewals. — Rental agreements shall be automatically renewed for the original term, except as provided in section 55-2010, Idaho Code.

History.

I.C., § 55-2011, as added by 1980, ch. 177, § 1, p. 375.

55-2012. Improvements. — (1) The landlord shall not restrict the resident's freedom of choice in purchasing goods or services but may reserve the right to approve or disapprove any exterior improvements on a lot. Any request for lot improvements or changes must be submitted in writing. The approval or disapproval must be given in writing, be reasonable and be uniformly applied.

(2) Improvements, except those fixed to the soil, the removal of which would significantly damage the landscape of the lot, shall remain the property of the resident. In removing improvements on termination of the rental agreement, the resident shall leave the lot in better or substantially the same condition as upon taking possession.

History.

I.C., § 55-2012, as added by 1980, ch. 177, § 1, p. 375; am. 1988, ch. 196, § 9, p. 369; am. 2011, ch. 184, § 17, p. 523.

STATUTORY NOTES

Amendments.

The 2011 amendment, by ch. 184, in subsections (1) and (2), deleted "mobile home" preceding "lot"; in subsection (1), substituted

"resident's freedom of choice" for "tenant's freedom of choice"; and, in subsection (2), twice substituted "resident" for "tenant."

55-2013. Deposits — Security. — (1) Any payment, deposit, fee or other charge which is required by the landlord in addition to periodic rent, utility charges or service fees, and is collected as prepaid rent or a sum to compensate for any resident default is a deposit governed by the provisions of this section.

(2) The landlord shall maintain a separate record of the deposits.

(3) Upon termination of the landlord's interest in the community, the landlord shall either transfer to his successor in interest that portion of the deposit remaining after making any deductions allowed under this section or return such portion to the resident.

(4) The claim of the resident to any deposit to which he is entitled by law takes precedence over the claims of any other creditor of the landlord.

History.

I.C., § 55-2013, as added by 1980, ch. 177, § 1, p. 375; am. 2011, ch. 184, § 18, p. 523.

STATUTORY NOTES

Amendments.

The 2011 amendment, by ch. 184, throughout the section, substituted “resident” for “tenant”; deleted former subsection (3), which read: “The provisions of sections 6-320 and 6-321, Idaho Code, shall apply to landlords

and tenants governed by this chapter”; redesignated former subsections (4) and (5) as present subsections (3) and (4); and, in subsection (3), substituted “community” for “mobile home park.”

55-2013A. Community resident associations. — (1) The residents in a community have the right to organize a resident or homeowner’s association to further their mutual interest and to conduct any other business and programs which the association shall determine. Community residents have the right to peacefully assemble and freely associate. Subject to reasonable notice and community facility rules, an association shall have the right to use the facilities of the community to conduct its business and programs including forums for or speeches by public officials or candidates for public office. When an association is organized it shall notify the landlord.

(2) A community resident association formed for the purpose of purchasing a community may give written notification to the landlord of the association’s interest in purchasing the community.

(3) For the purpose of notification, the community resident association shall provide the names and addresses of the three (3) designated members or officers of their community association to the landlord annually.

(4) A community resident association that has notified the landlord of its interest to purchase the community may request in writing that it be notified by the landlord if the owner or agent of the owner enters into a listing agreement with a licensed real estate broker to affect the sale of all or part of the community. The landlord shall provide such notification to the three (3) members designated under subsection (3) of this section within fifteen (15) days of the owner entering into the listing agreement.

(5) This section shall not apply to any of the following:

- (a) A governmental entity taking by eminent domain;
- (b) A forced sale pursuant to foreclosure or a deed given in lieu of foreclosure;
- (c) Transfer by gift, devise or operation of law;
- (d) A transfer by a corporation to an affiliate;
- (e) A conveyance incidental to financing the community;
- (f) An exchange of the community for other real property;
- (g) A transfer by a partnership to one (1) or more of its partners;
- (h) A sale or transfer to a person who would be an heir, or to a trust the beneficiaries of which would be heirs, of the community owner if the community owner were to die intestate.

History.

I.C., § 55-2013A, as added by 1988, ch. 196,
§ 10, p. 369; am. 2011, ch. 184, § 19, p. 523.

STATUTORY NOTES

Amendments.

The 2011 amendment, by ch. 184, substituted "Community resident" for "Tenant" in the section heading; and rewrote the section, which formerly read: "The tenants in a mobile home park have the right to organize a tenant or homeowner's association to further their

mutual interest and to conduct any other business and programs which the association shall determine. An association shall have the right to use the facilities of the park to conduct its business and programs. When an association is organized it shall notify the landlord."

55-2014. Resident action for damages — Specific performance. —

(1) A resident of a community may file an action against a landlord for damages and specific performance for:

- (a) Failure to maintain in good working order, to the terminal point of service, electrical, water or sewer services supplied by the landlord;
- (b) Maintaining the premises in a manner hazardous to the health or safety of the resident, including, but not limited to, a continuing violation of any of the following:

- (i) Any rule adopted by the department of environmental quality governing public drinking water systems;
- (ii) Any rule adopted by the department of environmental quality governing hazardous waste;
- (iii) Any rule adopted by the public health district in which the community is located governing wastewater and onsite sewage treatment systems;
- (iv) Any provision of the international fire code, as amended by the provisions of any fire code adopted by the county or municipality in which the community is located;
- (v) Any provision of the uniform building code, as amended by the provisions of any building code adopted by the county or municipality in which the community is located.

Nothing contained in the provisions of this subsection is intended to extend the application of any such rule or code provision to a previously existing condition which, as of July 1, 1993, was exempt from the enforcement of such rule or code provision.

- (c) Failure to return a security deposit as and when required by law;
- (d) Breach of any term or provision of the lease or rental agreement materially affecting the health and safety of the resident, whether explicitly or implicitly a part thereof.

(2) Upon filing the complaint, a summons must be issued, served and returned as in other actions; provided however, that in an action exclusively for specific performance, at the time of issuance of the summons, the court shall schedule a trial within twelve (12) days from the filing of the complaint, and the service of the summons, complaint and trial setting on the defendant shall be not less than five (5) days before the day of trial appointed by the court. If the plaintiff brings an action for damages under this section, or combines this action for damages with an action for specific performance, the early trial provision shall not be applicable, and a summons must be issued returnable as in other cases upon filing the complaint.

(3) In an action under this section, the plaintiff, in his complaint, must set forth the facts on which he seeks to recover, describe the premises, and set forth any circumstances which may have accompanied the failure or breach by the landlord.

(4) If, upon the trial, the verdict of the jury, or, if the case be tried without a jury, the finding of the court, be in favor of the plaintiff against the defendant, judgment shall be entered for such special damages as may be proven. General damages may be awarded but shall not exceed five hundred dollars (\$500). Judgment may also be entered requiring specific performance for any breach of agreement shown by the evidence, and for costs and disbursements.

(5) Before a resident shall have standing to file an action under this section, he or she must give his or her landlord three (3) days' written notice, listing each failure or breach upon which his action will be premised and written demand requiring performance or cure. If, within three (3) days after service of the notice, any listed failure or breach has not been performed or cured by the landlord, the resident may proceed to commence an action for damages and specific performance.

(6) The notice required in subsection (5) of this section shall be served either:

- (a) By delivering a copy to the landlord or his agent personally; or
- (b) If the landlord or his agent is absent from his usual place of business, by leaving a copy with an employee at the usual place of business of the landlord or his agent; or
- (c) By sending a copy of the notice to the landlord or his agent by certified mail, return receipt requested.

(7) The landlord is not liable if the maintenance condition was caused by the deliberate or negligent act or omission of the resident, a member of the resident's family or other person on the premises with the resident's consent.

History.

I.C., § 55-2014, as added by 1993, ch. 380, § 4, p. 1394; am. 2001, ch. 103, § 95, p. 243;

am. 2002, ch. 86, § 11, p. 195; am. 2011, ch. 184, § 20, p. 523.

STATUTORY NOTES

Cross References.

Department of environmental quality, § 39-104.

Local adoption of international building code, § 39-4116.

Prior Laws.

Former § 55-2014, which comprised I.C., § 55-2014, as added by 1980, ch. 177, § 1, p. 375; am. 1988, ch. 196, § 11, p. 369, was repealed by S.L. 1993, ch. 380, § 3, effective July 1, 1993.

Amendments.

The 2011 amendment, by ch. 184, in the section heading and throughout the section, substituted "resident" for "tenant"; throughout subsection (1), substituted "community" for "mobile home park"; and added subsection (7).

Compiler's Notes.

The international fire code is promulgated by the international code council, which is dedicated to building safety and fire prevention. See <http://www.iccsafe.org>.

55-2015. Retaliatory conduct by landlord prohibited. — The landlord shall not terminate a tenancy, refuse to renew a tenancy, increase rent

or decrease services he normally supplies, or threaten to bring an action for repossession of a lot as retaliation against the resident because the resident has:

(1) Complained in good faith about a violation of a building, safety or health code or regulation pertaining to a community to the governmental agency responsible for enforcing the code or regulation.

(2) Complained to the landlord concerning the maintenance or condition of the community, rent charged or rules.

(3) Organized, become a member of or served as an official in a community resident association, or similar organization, at a local, regional, state or national level.

(4) Retained counsel or an agent to represent his interests.

History.

I.C., § 55-2015, as added by 1980, ch. 177, § 1, p. 375; am. 1988, ch. 196, § 12, p. 369; am. 2011, ch. 184, § 21, p. 523.

STATUTORY NOTES

Amendments.

The 2011 amendment, by ch. 184, in the introductory paragraph, twice substituted "resident" for "tenant" and deleted "mobile home" preceding "lot"; redesignated the subsections numerically; in subsections (1) and

(2), substituted "community" for "mobile home park" or similar language; in subsection (2), deleted "and regulations" from the end; and in subsection (3), substituted "community resident association" for "homeowner's association."

JUDICIAL DECISIONS

ANALYSIS

Applicability.

Legislative intent.

Applicability.

Tenant presented evidence and argument that the landlord was seeking his eviction because of the tenant's complaints to the landlord about excessive electrical rate charges and late fees; thus, the tenant raised the defense of a violation of subsection (b), and the magistrate erred by not referencing this code section or making any findings on the defense in his oral ruling at trial or in his subsequent written judgment. *Connolly v. Powell*, 141 Idaho 844, 118 P.3d 1232 (Ct. App. 2005).

Legislative Intent.

The enactment of this section indicated legislative intent to provide protection to a tenant who seeks enforcement of housing laws and the legislature's failure to amend unrelated code sections did not necessarily imply its intent to exclude the principles contained in the new legislation from application elsewhere in the code. *Wright v. Brady*, 126 Idaho 671, 889 P.2d 105 (Ct. App. 1995).

55-2016. Arbitration and mediation. — The landlord and resident may agree in writing to submit any dispute arising under the provisions of this chapter, or under the terms, conditions or performance of the rental agreement or under the rules of the community, to mediation or binding arbitration by an independent third party.

History.

I.C., § 55-2016, as added by 1993, ch. 380, § 5, p. 1394; am. 2011, ch. 184, § 22, p. 523.

STATUTORY NOTES

Amendments.

The 2011 amendment, by ch. 184, added “and mediation” in the section heading; and rewrote the section, which formerly read: “The landlord and tenant may agree in writing to submit a controversy arising under the provisions of this chapter to arbitration through the better business bureau, or simi-

lar private association, or as elsewhere provided in Idaho law.”

Compiler's Notes.

Former § 55-2016 was amended and redesignated as § 55-2017 by § 6 of S.L. 1993, ch. 380.

55-2017. Penalties. — If upon the trial of any action brought under the provisions of section 55-2014, Idaho Code, or those of section 6-302 or 6-303, Idaho Code, the court shall find that the defendant acted with malice, wantonness or oppression, judgment may be entered for three (3) times the amount at which actual damages are assessed.

History.

I.C., § 55-2016, as added by 1980, ch. 177,

§ 1, p. 375; am. and redesign. 1993, ch. 380, § 6, p. 1394.

STATUTORY NOTES

Compiler's Notes.

This section was formerly compiled as § 55-2016.

Former § 55-2017 was amended and redesignated as § 55-2019 by § 8 of S.L. 1993, ch. 380.

55-2018. Attorney's fees. — In any action brought under the provisions of this chapter, or those of section 6-302 or 6-303, Idaho Code, except in those cases where treble damages are awarded, the prevailing party shall be entitled to an award of attorney's fees.

History.

I.C., § 55-2018, as added by 1993, ch. 380, § 7, p. 1394.

JUDICIAL DECISIONS

Specific Findings Not Required.

The court is not required to make specific findings demonstrating how it employed any of the factors in Idaho R. Civ. P. 54 in reaching

the award amount; therefore such failure does not by itself constitute an abuse of discretion. *Post Falls Trailer Park v. Fredekind*, 131 Idaho 634, 962 P.2d 1018 (1998).

55-2019. Venue. — Venue for any action arising under this chapter shall be in the district court of the county in which the lot is located.

History.

I.C., § 55-2017, as added by 1980, ch. 177,

§ 1, p. 375; am. and redesign. 1993, ch. 380, § 8, p. 1394; am. 2011, ch. 184, § 23, p. 523.

STATUTORY NOTES

Amendments.

The 2011 amendment, by ch. 184, deleted “mobile home” preceding “lot.”

Compiler's Notes.

This section was formerly compiled as § 55-2017.

Section 2 of S.L. 1980, ch. 177 read: “The provisions of this act are hereby declared to be severable and if any provision of this act or the application of such provision to any person or circumstance is declared invalid for any reason, such declaration shall not affect the validity of remaining portions of this act.”

55-2020. Service of notice. — (1) Any three (3) day notice to the resident as required by the provisions of this chapter may be served either:

- (a) By delivering a copy to the resident personally; or
- (b) If the resident be absent from the lot, by leaving a copy with someone of suitable age and discretion at the lot and sending a copy through the mail addressed to the resident at the lot. If a person of suitable age or discretion cannot be found at the lot, then by affixing a copy in a conspicuous place on the lot and sending a copy by certified mail return receipt requested addressed to the resident at the lot.

(2) Unless otherwise provided, any notice to the resident in excess of three (3) days as required by the provisions of this chapter may be served either:

- (a) By delivering a copy to the resident personally; or
- (b) By sending a copy by certified mail return receipt requested addressed to the resident at the lot.

(3) Service upon a subtenant may be made in the manner as provided in this section.

History.

I.C., § 55-2020, as added by 2011, ch. 184,
§ 24, p. 523.

CHAPTER 21

UNIFORM CONSERVATION EASEMENT ACT

SECTION.

55-2101. Definitions.

55-2102. Conservation easement created —
Conveyance — Acceptance —
Duration.

55-2103. Persons who may bring actions —
Powers of the court.

55-2104. Validity of conservation easements.

SECTION.

55-2105. Applicability of this chapter.

55-2106. Uniformity of application and construction.

55-2107. Eminent domain.

55-2108. Other interests not impaired by conservation easements.

55-2109. Taxation.

55-2101. Definitions. — As used in this chapter:

(1) “Conservation easement” means a nonpossessory interest of a holder in real property imposing limitations or affirmative obligations the purposes of which include retaining or protecting natural, scenic, or open-space values of real property, assuring its availability for agricultural, forest, recreational, or open-space use, protecting natural resources, maintaining or enhancing air or water quality, or preserving the historical, architectural, archaeological, or cultural aspects of real property.

(2) “Holder” means:

(a) A governmental body empowered to hold an interest in real property under the laws of this state or the United States; or

(b) A charitable corporation, charitable association, or charitable trust, the purposes or powers of which include retaining or protecting the natural, scenic, or open-space values of real property, assuring the availability of real property for agricultural, forest, recreational, or open-space use, protecting natural resources, maintaining or enhancing

air or water quality, or preserving the historical, architectural, archaeological, or cultural aspects of real property.

(3) "Third-party right of enforcement" means a right provided in a conservation easement to enforce any of its terms granted to a governmental body, charitable corporation, charitable association, or charitable trust, which, although eligible to be a holder, is not a holder.

History.

I.C., § 55-2101, as added by 1988, ch. 222,
§ 1, p. 422.

55-2102. Conservation easement created — Conveyance — Acceptance — Duration. — (1) Except as otherwise provided in this chapter, a conservation easement may be created, conveyed, recorded, assigned, released, modified, terminated, or otherwise altered or affected in the same manner as other easements.

(2) No right or duty in favor of or against a holder and no right in favor of a person having a third-party right of enforcement arises under a conservation easement before its acceptance by the holder and a recordation of the acceptance.

(3) Except as provided in subsection (2) of section 55-2103, Idaho Code, a conservation easement is unlimited in duration unless the instrument creating it otherwise provides.

(4) An interest in real property in existence at the time a conservation easement is created is not impaired by it unless the owner of the interest is a party to the conservation easement or consents to it.

History.

I.C., § 55-2102, as added by 1988, ch. 222,
§ 1, p. 422.

55-2103. Persons who may bring actions — Powers of the court.

— (1) An action affecting a conservation easement may be brought by:

- (a) An owner of an interest in the real property burdened by the easement;
- (b) A holder of the easement;
- (c) A person having a third-party right of enforcement; or
- (d) A person authorized by other law.

(2) This chapter does not affect the power of a court to modify or terminate a conservation easement in accordance with the principles of law and equity.

History.

I.C., § 55-2103, as added by 1988, ch. 222,
§ 1, p. 422.

55-2104. Validity of conservation easements. — A conservation easement is valid even though:

- (1) It is not appurtenant to an interest in real property;
- (2) It can be or has been assigned to another holder;

- (3) It is not of a character that has been recognized traditionally at common law;
- (4) It imposes a negative burden;
- (5) It imposes affirmative obligations upon the owner of an interest in the burdened property or upon the holder;
- (6) The benefit does not touch or concern real property; or
- (7) There is no privity of estate or of contract.

History.

I.C., § 55-2104, as added by 1988, ch. 222,
§ 1, p. 422.

55-2105. Applicability of this chapter. — (1) This chapter applies to any interest created after its effective date which complies with this chapter, whether designated as a conservation easement or as a covenant, equitable servitude, restriction, easement, or otherwise. The instrument creating the conservation easement shall state it was created under the provisions of this chapter.

(2) This chapter applies to any interest created before its effective date if it would have been enforceable had it been created after its effective date unless retroactive application contravenes the constitution or laws of this state or the United States.

This chapter does not invalidate any interest, whether designated as a conservation or preservation easement or as a covenant, equitable servitude, restriction, easement, or otherwise, that is enforceable under other law of this state.

History.

I.C., § 55-2105, as added by 1988, ch. 222,
§ 1, p. 422.

STATUTORY NOTES**Compiler's Notes.**

As enacted the section heading of this section read, "Applicability of the act."

This chapter was enacted by S.L. 1988, ch. 222, the effective date of which was July 1, 1988.

55-2106. Uniformity of application and construction. — This chapter shall be applied and construed to effectuate its general purpose to make uniform the laws with respect to the subject of the chapter among states enacting it.

History.

I.C., § 55-2106, as added by 1988, ch. 222,
§ 1, p. 422.

55-2107. Eminent domain. — A conservation easement pursuant to this chapter shall not be created through eminent domain proceedings pursuant to chapter 7, title 7, Idaho Code.

History.
I.C., § 55-2107, as added by 1988, ch. 222,
§ 1, p. 422.

55-2108. Other interests not impaired by conservation easements. — No interest in real property cognizable under the statutes, common law or custom in effect in this state prior to the effective date of this chapter shall be impaired, invalidated, or in any way adversely affected by reason of any provision of this chapter. No provision of this chapter shall be construed to mean that conservation easements were not lawful estates in land prior to the effective date of this chapter. Nothing in this chapter shall be construed so as to impair the rights of any entity with eminent domain authority pursuant to chapter 7, title 7, Idaho Code, with respect to right-of-way, easements or other property rights upon which facilities, plants, highway systems or other systems of that entity are located or are to be located. Nothing in this chapter shall be construed so as to impair or conflict with the provisions of chapter 46, title 67, Idaho Code, relating to the preservation of historic sites, or with the provisions of chapter 43, title 67, Idaho Code, relating to the preservation of recreational places.

History.
I.C., § 55-2108, as added by 1988, ch. 222,
§ 1, p. 422.

STATUTORY NOTES

Compiler’s Notes. 222, the effective date of which was July 1,
This chapter was enacted by S.L. 1988, ch. 1988.

55-2109. Taxation. — The granting of a conservation easement across a piece of property shall not have an effect on the market value of property for ad valorem tax purposes and when the property is assessed for ad valorem tax purposes, the market value shall be computed as if the conservation easement did not exist.

History.
I.C., § 55-2109, as added by 1988, ch. 222,
§ 1, p. 422.

CHAPTER 22

UNDERGROUND FACILITIES DAMAGE PREVENTION

SECTION.	SECTION.
55-2201. Legislative intent.	55-2205. Excavation contracts — Limitations — Precautions to avoid damage — Liability for damage.
55-2202. Definitions.	55-2206. Damage to underground facilities — Duties of excavator and owner.
55-2203. Permit compliance — Notice of excavation — Response to notice — Compensation for failure to comply — Exemptions.	55-2207. Duties of public agency issuing excavation permits.
55-2204. One-number locator service — Establishment — Participation required — Funding.	55-2208. Excavations exempt from notice re-

SECTION.

quirement.
55-2209. Violation — Civil penalty — Treble
damages — Other remedies
unimpaired.

SECTION.

55-2210. Waiver permitted by owner of un-
derground facility.

55-2201. Legislative intent. — It is the intent of the legislature in enacting this chapter to assign responsibilities for locating and keeping accurate records of underground facility locations, for protecting and repairing damage to existing underground facilities, and for protecting the public health and safety from interruption in services caused by damage to existing underground facilities.

History.

I.C., § 55-2201, as added by 1990, ch. 351,
§ 1, p. 939.

RESEARCH REFERENCES

A.L.R. — Tort liability for pollution from
underground storage tank. 5 A.L.R.5th 1.

55-2202. Definitions. — As used in this chapter:

(1) "Business day" means any day other than Saturday, Sunday, or a legal, local, state, or federal holiday.

(2) "Damage" includes the substantial weakening of structural or lateral support of an underground facility, penetration, impairment, or destruction of any underground protective coating, housing, or other protective device, or the severance, partial or complete, of any underground facility to the extent that the project owner or the affected underground facility owner determines that repairs are required.

(3) "Emergency" means any condition constituting a clear and present danger to life or property, or a customer service outage.

(4) "Excavation" means any operation in which earth, rock, or other material in the ground is moved or otherwise displaced by any means including, but not limited to explosives.

(5) "Excavator" means any person who engages directly in excavation.

(6) "Identified but unlocatable underground facility" means an underground facility which has been identified but cannot be located with reasonable accuracy.

(7) "Identified facility" means any underground facility which is indicated in the project plans as being located within the area of proposed excavation.

(8) "Locatable underground facility" means an underground facility which can be field-marked with reasonable accuracy.

(9) "Marking" means the use of stakes, paint, or other clearly identifiable materials to show the field location of underground facilities, in accordance with the current color code standard of the American public works association. Markings shall include identification letters indicating the specific type of the underground facility.

(10) "One-number locator service" means a service through which a

person can notify owners of underground facilities and request field-marking of their underground facilities.

(11) "Person" means an individual, partnership, association, corporation, a state, a city, a county, or any subdivision or instrumentality of a state, and its employees, agents, or legal representatives.

(12) "Reasonable accuracy" or "reasonably accurate" means location within twenty-four (24) inches horizontally of the outside dimensions of each side of an underground facility.

(13) "Underground facility" means any item buried or placed below ground for use in connection with the storage or conveyance of water (unless being delivered primarily for irrigation), sewage, electronic, telephonic or telegraphic communications, cable television, electric energy, petroleum products, gas, gaseous vapors, hazardous liquids, or other substances and including, but not limited to, pipes, sewers, conduits, cables, valves, lines, wires, manholes, attachments, and those parts of poles or anchors below ground.

(14) "Underground facility owner" means any person who owns or operates an underground facility.

History.

I.C., § 55-2202, as added by 1990, ch. 351,
§ 1, p. 939; am. 1991, ch. 170, § 1, p. 409.

STATUTORY NOTES

Compiler's Notes.

For more on the American public works association, see <http://apwa.net>.

The words enclosed in parentheses so appeared in the law as enacted.

55-2203. Permit compliance — Notice of excavation — Response to notice — Compensation for failure to comply — Exemptions. —

(1) Before commencing excavation, the excavator shall:

(a) Comply with other applicable law or permit requirements of any public agency issuing permits;

(b) Pre-mark on-site the path of excavation with white paint or, as the circumstances require, other reasonable means that will set out clearly the path of excavation. An excavator need not pre-mark as required in this subsection if:

(i) The underground facility owner or its agent can determine the location of the proposed excavation by street address or lot and block by referring to a locate ticket; or

(ii) The excavator and underground facility owner have had a meeting prior to the beginning of the proposed excavation at the excavation site for the exchange of information required under this subsection.

(c) Provide notice of the scheduled commencement of excavation to all underground facility owners through a one-number locator service. If no one-number locator service is available, notice shall be provided individually to those owners of underground facilities known to have or suspected of having underground facilities within the area of proposed excavation. The notice shall be communicated by the excavator to the

one-number locator service or, if no one-number locator service is available, to the owners of underground facilities not less than two (2) business days nor more than ten (10) business days before the scheduled date for commencement of excavation, unless otherwise agreed in writing by the parties.

(2) Upon receipt of the notice provided for in this section, the underground facility owner or the owner's agent shall locate and mark its locatable underground facilities by surface-marking the location of the facilities. If there are identified but unlocatable underground facilities, the owner of such facilities or the owner's agent shall locate and mark the underground facilities in accordance with the best information available to the owner of the underground facilities and with reasonable accuracy as defined in section 55-2202(12), Idaho Code. The owner of the underground facility or the owner's agent providing the information shall respond no later than two (2) business days after the receipt of the notice or before the excavation time set forth in the excavator's notice, at the option of the underground facility owner, unless otherwise agreed in writing by the parties. Excavators shall not excavate until all known facilities have been marked. Once marked by the owner of the underground facility, or the owner's agent, the excavator is responsible for maintaining the markings. Unless otherwise agreed in writing by the parties, maintained markings shall be valid for purposes of the notified excavation for a period of no longer than three (3) consecutive weeks following the date of notification so long as it is reasonably apparent to the excavator that site conditions have not changed so substantially as to invalidate the markings.

(a) Excavators shall have the right to receive compensation from the owner of the underground facility for costs incurred if the owner of the underground facility does not locate its facilities in accordance with this chapter.

(b) The owner of the underground facility shall have the right to receive compensation for costs incurred in responding to excavation notices given less than two (2) business days prior to the excavation except for notices given for discovered facilities after the owner has identified facilities.

(3) Emergency excavations are exempt from the time requirements for notification provided in this section.

(4) If the excavator, while performing the excavation, discovers underground facilities (whether active or abandoned) which are not identified, the excavator shall cease excavating in the vicinity of the facility and immediately notify the owner or operator of such facilities, or the one-number locator service. The excavator shall have the right to receive compensation from the underground facility owner for standby cost (based on standby rates made publicly available) incurred as a result of waiting for the underground facility owner or the owner's agent to arrive at the work site to identify the unidentified facilities and provided that if the underground facility owner or the owner's agent supplies reasonably accurate locate information within eight (8) hours of the time that the excavator notifies the underground facility owner of facilities not previously located, the excavator's compensation for delay of the excavation project shall be limited to actual costs or one thousand dollars (\$1,000), whichever is less.

History.

I.C., § 55-2203, as added by 1990, ch. 351, § 1, p. 939; am. 1991, ch. 170, § 2, p. 409; am. 2002, ch. 351, § 1, p. 1001.

STATUTORY NOTES**Compiler's Notes.**

The words enclosed in parentheses so appeared in the law as enacted.

55-2204. One-number locator service — Establishment — Participation required — Funding. — Two (2) or more persons who own or operate underground facilities in a county may voluntarily establish or contract with a third person to provide a one-number locator service to maintain information concerning underground facilities within a county. Upon the establishment of the first such one-number service, all others operating and maintaining underground facilities within said county shall participate and cooperate with the service, and no duplicative service shall be established pursuant to this chapter. The activities of the one-number locator service shall be funded by all of the underground facility owner/operators required by the provisions of this section to participate in and cooperate with the service.

History.

I.C., § 55-2204, as added by 1990, ch. 351, § 1, p. 939.

55-2205. Excavation contracts — Limitations — Precautions to avoid damage — Liability for damage. — (1) Project owners shall indicate in bid or contract documents the existence of underground facilities known by the project owner to be located within the proposed area of excavation.

(2) An excavator shall use reasonable care to avoid damaging underground facilities. An excavator shall:

- (a) Determine by hand digging, in the area twenty-four (24) inches or less from the facilities, the precise actual location of underground facilities which have been marked;
- (b) Plan the excavation to avoid damage to or minimize interference with underground facilities in and near the excavation area; and
- (c) Provide such support for underground facilities in and near the construction area, including during backfill operations, as may be reasonably necessary for the protection of such facilities.

(3) If an underground facility is damaged and such damage is the consequence of the failure to fulfill an obligation under this chapter, the party failing to perform that obligation shall be liable for any damages to the underground facility owner. Nothing in this chapter prevents the parties to an excavation contract from contracting with respect to the allocation of risk for changed or differing site conditions.

(4) In any action brought under this section, the prevailing party is entitled to reasonable attorney's fees.

History.

I.C., § 55-2205, as added by 1990, ch. 351,
§ 1, p. 939.

55-2206. Damage to underground facilities — Duties of excavator and owner. — (1) An excavator who, in the course of excavation, contacts or damages an underground facility shall notify the underground facility owner and the one-number locator service. If the damage causes an emergency condition, the excavator causing the damage shall also alert the appropriate local public safety agencies and take all appropriate steps to ensure the public safety. No damaged underground facility may be buried until it is repaired or relocated.

(2) The owner of the underground facilities damaged shall arrange for repairs or relocation as soon as is practical or may permit the excavator to do necessary repairs or relocation at a mutually acceptable price.

History.

I.C., § 55-2206, as added by 1990, ch. 351,
§ 1, p. 939; am. 2002, ch. 351, § 2, p. 1001.

55-2207. Duties of public agency issuing excavation permits. —

(1) Any public agency issuing permits authorizing excavation operations shall notify persons seeking such permits of the existence of this chapter and the one-call locator service telephone number.

(2) A permit shall not be valid for excavation until or unless the notice provisions of this section have been complied with.

History.

I.C., § 55-2207, as added by 1990, ch. 351,
§ 1, p. 939; am. 1991, ch. 170, § 3, p. 409.

55-2208. Excavations exempt from notice requirement. — Unless facts exist which would reasonably cause an excavator to believe that an underground facility exists within the depth of the intended excavation, the following excavations shall not require notice of the excavation pursuant to section 55-2203(1)(c), Idaho Code:

(1) An excavation of less than fifteen (15) inches in vertical depth outside the boundaries of an underground facility easement of public record on private property.

(2) The tilling of soil to a depth of less than fifteen (15) inches for agricultural practices.

(3) The extraction of minerals within recorded mining claims or excavation within material sites legally located and of record, unless such excavation occurs within the boundaries of an underground facility easement.

(4) Normal maintenance of roads, streets and highways, including cleaning of roadside drainage ditches and clear zones, to a depth of fifteen (15) inches below the grade established during the design of the last construction of which underground facility owners were notified and which excavation will not reduce the authorized depth of cover of an underground facility.

(5) Replacement of highway guardrail posts, sign posts, delineator posts,

culverts, and traffic control device supports in the same approximate location and depth of the replaced item within public highway rights-of-way.

(6) Normal maintenance of railroad rights-of-way, except where such rights-of-way intersect or cross public roads, streets, highways, or rights-of-way adjacent thereto, or recorded underground facility easements.

History.

§ 1, p. 939; am. 1991, ch. 170, § 4, p. 409; am.

I.C., § 55-2208, as added by 1990, ch. 351, 2002, ch. 351, § 3, p. 1001.

55-2209. Violation — Civil penalty — Treble damages — Other remedies unimpaired. — (1) Any person who violates any provision of this chapter, other than the failure to provide notice pursuant to section 55-2203(1)(c), Idaho Code, and which violation results in damage to underground facilities, is subject to a civil penalty of not more than one thousand dollars (\$1,000) for each violation. All penalties recovered in such actions shall be deposited in the state general account.

(2) If an underground facility is damaged as a result of an excavator's failure to provide notice pursuant to section 55-2203(1)(c), Idaho Code, unless otherwise exempt, the excavator shall receive a written warning from the underground facility owner and shall be liable for actual costs of repairing the facility if it is the excavator's first failure to provide the notice required pursuant to section 55-2203(1)(c), Idaho Code, during any consecutive period of twelve (12) months.

(a) If the court finds, by a preponderance of the evidence, that the excavator has, on more than one (1) occasion during any consecutive period of twelve (12) months, failed to provide the notice required pursuant to section 55-2203(1)(c), Idaho Code, and that such failure has been a proximate cause of damage to an underground facility, the court may increase the civil penalty in an amount up to five thousand dollars (\$5,000).

(b) If the court finds, by a preponderance of the evidence, that the excavator has, on three (3) or more occasions during any consecutive period of twelve (12) months, failed to provide the notice required pursuant to section 55-2203(1)(c), Idaho Code, and that such failure has been a proximate cause of damage to an underground facility, the court may increase the civil penalty in an amount up to ten thousand dollars (\$10,000) for the third occurrence taking place during the twelve (12) month period.

(3)(a) An action to recover a civil penalty under this section may be brought by a prosecuting attorney. If the prosecuting attorney does not file an action for such civil penalty within sixty (60) days from the date of a request for such action by the owner of an underground facility, the underground facility owner may file such action. Venue for such an action shall be proper in the judicial district for the county in which the damaged underground facility is located or the county in which the excavator resides or maintains a principal place of business in this state. The prevailing party in such action shall be entitled to recover its costs and reasonable attorney's fees incurred in such action.

(b) The penalties provided in this section are in addition to any other

remedy at law or equity available to an excavator or to the owner or operator of a damaged underground facility.

(c) The court shall consider, as a mitigating factor in determining the amount of civil penalty to be imposed, evidence showing by a preponderance of the evidence that the violation occurred solely as a proximate result of the excavator or underground facility owner's reasonable response to an emergency beyond the control of the offending party.

(d) Any civil penalty imposed pursuant to this section shall be deposited in the state general fund. Attorney's fees shall be paid solely to the party successfully bringing the action.

(4) Any excavator who damages an underground facility on a third or subsequent violation pursuant to subsection (2) of this section may be liable for treble the costs incurred in repairing or relocating the facility.

(5) Unless expressly provided herein, nothing in this chapter eliminates, alters or otherwise impairs common law, statutory or other preexisting rights and duties of persons affected by the provisions of this chapter; nor does anything in this chapter, unless expressly so provided, eliminate, alter or otherwise impair other remedies, state or federal, including those at common law, of an underground facility owner whose facility is damaged; nor do the provisions of this chapter affect any civil remedies for personal injury or property damage except as expressly provided for herein.

History.

I.C., § 55-2209, as added by 1990, ch. 351,
§ 1, p. 939; am. 2002, ch. 351, § 4, p. 1001.

STATUTORY NOTES

Cross References.

General fund, § 67-1205.

55-2210. Waiver permitted by owner of underground facility. —

The notification and marking provisions of this chapter may be waived for one or more designated persons by an underground facility owner with respect to all or part of that underground facility owner's own underground facilities.

History.

I.C., § 55-2210, as added by 1990, ch. 351,
§ 1, p. 939.

STATUTORY NOTES

Compiler's Notes.

Section 2 of S.L. 1990, ch. 351 read: "The provisions of this act are hereby declared to be severable and if any provision of this act or the application of such provision to any person or circumstance is declared invalid for

any reason, such declaration shall not affect the validity of remaining portions of this act."

Effective Dates.

Section 3 of S.L. 1990, ch. 351 provided that the act would become effective July 1, 1991.

CHAPTER 23
SELF-SERVICE STORAGE FACILITIES

SECTION.

- 55-2301. Definitions.
- 55-2302. Restrictive use of terms.
- 55-2303. Restrictions on use of leased space.
- 55-2304. Rental agreement.

SECTION.

- 55-2305. Lien created.
- 55-2306. Enforcement of lien.
- 55-2307. Severability.

55-2301. Definitions. — As used in this chapter:

(1) “Default” means the failure to perform, on time, any obligation or duty set forth in the rental agreement.

(2) “Last known address” means that address provided by the lessee in the rental agreement or the address provided by lessee to the operator in a subsequent written notice of a change of address.

(3) “Leased space” means the individual storage space at the self-service storage facility which is or may be rented to a lessee pursuant to a rental agreement.

(4) “Lessee” means a person, sublessee, successor, or assignee entitled to the use of a leased space at a self-service storage facility under a rental agreement.

(5) “Operator” means any person authorized by the owner to manage the facility.

(6) “Owner” means the person who holds legal title to the self-service storage facility. An owner may also be an operator.

(7) “Personal property” means those items placed within the leased space and includes, but is not limited to, goods, wares, merchandise, motor vehicles, watercraft and household items and furnishings.

(8) “Rental agreement” means a signed, written agreement or contract that establishes conditions or rules concerning the use and occupancy by a lessee of a self-service storage facility and includes any signed written amendment to such an agreement.

(9) “Self-service storage facility” means any real property used for renting or leasing individual storage space in which the lessees themselves store and remove their own personal property on a “self-service” basis.

History.

I.C., § 55-2301, as added by 1990, ch. 381,
§ 1, p. 1055.

55-2302. Restrictive use of terms. — A self-service storage facility is not a warehouse or a public utility.

History.

I.C., § 55-2302, as added by 1990, ch. 381,
§ 1, p. 1055.

55-2303. Restrictions on use of leased space. — (1) An operator may not knowingly permit a leased space to be used for residential purposes.

(2) A lessee may not use a leased space for residential purposes.

History.

I.C., § 55-2303, as added by 1990, ch. 381,
§ 1, p. 1055.

55-2304. Rental agreement. — (1) From and after July 1, 1990, any operator offering storage spaces in a self-service storage facility for rent shall provide a written rental agreement which shall be executed by the operator and the lessee. The operator of a self-storage facility shall provide a lessee with a copy of the rental agreement at the time of the rental.

(2) The rental agreement shall contain a conspicuous statement advising the lessee:

- (a) Of the existence of the lien;
- (b) That the property in the leased space may be sold to satisfy the lien if the lessee is in default; and
- (c) That the personal property stored in a storage space will not be insured unless the lessee obtains insurance on his property.

(3) The rental agreement shall contain a provision requiring the lessee to disclose any lienholders or secured parties who have an interest in property that is stored in the self-service storage facility.

History.

I.C., § 55-2304, as added by 1990, ch. 381,
§ 1, p. 1055.

55-2305. Lien created. — The owner of a self-[service] storage facility, his heirs, executors, administrators, successors, and assigns shall have a lien on all personal property stored within each leased space located at the self-service storage facility for rent, labor, or other charges, present or future, and for expenses reasonably incurred in enforcing the lien. Self-[service] storage facility liens shall be brought exclusively under the provisions of this chapter.

History.

I.C., § 55-2305, as added by 1990, ch. 381,
§ 1, p. 1055.

STATUTORY NOTES**Compiler's Notes.**

The bracketed word "service" was inserted

by the compiler to supply a term missing from the enacting legislation.

55-2306. Enforcement of lien. — (1) Action to enforce a lienholder's claim which has become due against a lessee and which is secured by the owner's lien may be taken by the owner or operator after the lessee has been in default of the rental agreement continuously for a period of sixty (60) days.

(2) The operator shall send notice by certified mail to the lessee at his last known address and to all persons disclosed by the lessee as claiming a security interest in the stored property. The notice shall include:

- (a) The name, address and telephone number of the person claiming the lien;

- (b) An itemized statement of the lienholder's claim showing the sum due at the time of the notice and the date when the sum became due;
- (c) A demand for payment within a time specified, not less than ten (10) days after mailing of the notice;
- (d) A statement that unless the claim is paid within the time stated in the notice, the personal property shall be advertised for sale and shall be sold at a specified time and place, but which shall not be sooner than ten (10) days after the first publication;
- (e) A brief and general description of the goods subject to the lien; and
- (f) Notification that the operator may deny access by the lessee to his personal property until the lien has been satisfied.

(3) Upon expiration of the time specified in subsection (2)(c) of this section, an advertisement of the sale shall be published once a week for two (2) consecutive weeks in a newspaper of general circulation in the county where the self-service storage facility is located. The advertisement shall include:

- (a) The location, date, time and manner of the sale of the property stored in the self-service facility;
- (b) A brief and general description of the personal property; and
- (c) The name and last known address of the lessee.

(4) At any time before the advertised sale of the personal property has been conducted, the lessee or any other person may pay the amount necessary to satisfy the lien, including all documented and verifiable labor and expenses incurred in enforcing the lien.

(5) In the event of a sale, the operator shall:

- (a) Ensure that the sale is conducted in conformance with the terms of the published notice;
- (b) Identify the specific properties and disclose the names and addresses provided by the lessee, of persons claiming a security interest in the specified properties; and
- (c) Comply with the provisions of chapter 17, title 49, Idaho Code, when foreclosing on titled vehicles.

(6) The proceeds of the sale must be applied to the discharge of the lien and costs. The remainder, if any, shall be paid over to the lessee or any other person authorized in writing by the lessee to claim the balance.

History.

I.C., § 55-2306, as added by 1990, ch. 381,
§ 1, p. 1055.

55-2307. Severability. — The provisions of this act are hereby declared to be severable and if any provision of this act or the application of such provision to any person or circumstance is declared invalid for any reason, such declaration shall not affect the validity of remaining portions of this act.

History.

I.C., § 55-2307, as added by 1990, ch. 381,
§ 1, p. 1055.

STATUTORY NOTES

Compiler's Notes.

The term "this act" refers to S.L. 1990, ch.

381, which is compiled as §§ 55-2301 to 55-2307.

CHAPTER 24**ACTIVITIES IN PROXIMITY TO HIGH VOLTAGE
OVERHEAD LINES**

SECTION.

55-2401. Definitions.

55-2402. Activity near overhead line —
Safety restrictions.

55-2403. Activity in close proximity to lines
— Clearance arrangements

SECTION.

with public utility — Pay-
ment.

55-2404. Violations.

55-2405. Exemptions.

55-2401. Definitions. — As used in this chapter:

(1) "Authorized person" means:

(a) An employee of a public utility, or a contractor or subcontractor or employee of a contractor or subcontractor of a public utility, which produces, transmits or delivers electricity, while the employee is working within the scope of his employment with or for the public utility;

(b) An employee of a public utility which provides and whose work relates to communication services or an employee of a state, county or municipal agency which has authorized circuit construction on or near the poles or structures of a public utility, while the employee is working within the scope of his employment;

(c) An employee of an industrial plant whose work relates to the electrical system of the industrial plant, while the employee is working within the scope of his employment;

(d) An employee of a cable television or communication services company or an employee of a contractor of a cable television or communication services company, if specifically authorized by the owner of the poles to make cable television or communication services attachments, while the employee is working within the scope of his employment; or

(e) An employee or agent of a state, county or municipal agency which has or whose work relates to overhead electrical lines or circuit construction or conductors on poles or structures of any type, while the employee is working within the scope of his employment.

(2) "Contractor" means any person, sole proprietorship, partnership, joint venture, corporation, or other business entity doing business in the state of Idaho which contracts, subcontracts or otherwise agrees or undertakes to perform any function or activity upon any land, building, highway, waterway or other premises.

(3) "High voltage" means voltage in excess of six hundred (600) volts measured between conductors or between a conductor and the ground.

(4) "Overhead line" means all electrical conductors installed above ground.

(5) "Person" means any individual or business entity of any kind.

(6) "Public utility" means any publicly, cooperatively or privately owned utility which owns or operates a high voltage overhead line.

History.

I.C., § 55-2401, as added by 1992, ch. 177,
§ 1, p. 559; am. 2000, ch. 319, § 1, p. 1076.

55-2402. Activity near overhead line — Safety restrictions. —

Unless danger against contact with high voltage overhead lines has been effectively guarded against as provided in section 55-2403, Idaho Code, a contractor, individually or through an agent or employee or as an agent or employee, shall not:

(1) Perform or require any other person to perform any function or activity upon any land, building, highway, waterway or other premises if at any time during the performance of such function or activity it is possible that the contractor or the person or any part of any tool or material used by the contractor or the person could move or be placed or brought closer to any high voltage overhead line than the following clearances:

(a) For lines nominally rated at fifty (50) kilovolts or less, ten (10) feet of clearance;

(b) For lines nominally rated at over fifty (50) kilovolts, ten (10) feet plus four-tenths (.4) of an inch for each kilovolt over fifty (50) kilovolts.

(2) Operate any mechanical or hoisting equipment or any load of such equipment, any part of which is capable of vertical, lateral or swinging motion closer to any high voltage overhead lines than the clearances specified in subsections (1)(a) and (b) of this section.

History.

I.C., § 55-2402, as added by 1992, ch. 177,
§ 1, p. 559.

55-2403. Activity in close proximity to lines — Clearance arrangements with public utility — Payment. —

(1) If any contractor desires to temporarily carry on any function, activity, work or operation in closer proximity to any high voltage overhead line than permitted in this chapter, or in such proximity that the function, activity, work or operation could possibly come within closer proximity than permitted in this chapter, the contractor responsible for performing the work shall promptly notify the public utility owning or operating the high voltage overhead line in writing. The contractor may perform the work only after making mutually agreeable arrangements with the public utility owning or operating the line, including coordination of work and construction schedules. Arrangements may include placement of temporary mechanical barriers to separate and prevent contact between material, equipment or persons and the high voltage overhead lines, temporary deenergization and grounding, or temporary relocation or raising of the high voltage overhead lines. A written agreement identifying the arrangements and the payment to be made therefor, if any, as provided in subsection (2) of this section shall be executed by the parties.

(2) The public utility may, in conformance with its then current practice, require the contractor responsible for performing the work in the vicinity of

the high voltage overhead lines to pay any actual expenses of the public utility in providing arrangements for work in close proximity to the overhead lines. The public utility is not required to provide the arrangements for work in close proximity to the overhead lines until a written agreement for payment has been made. The public utility may require payment in advance. Any surplus amounts paid to the utility shall be refunded.

(3) The public utility shall make arrangements to accommodate activity in proximity to overhead lines in accordance with the agreement of the parties. Where a date certain for completion of the clearance arrangements is not otherwise specified in the agreement, the arrangements must be completed within a reasonable time with consideration to all existing circumstances. However, any delay in completing the arrangement shall not excuse nor authorize the person, contractor or subcontractor to undertake to perform work in closer proximity to high voltage overhead lines than is provided herein, until such time as the arrangements have been completed.

(4) The public utility may deny any request for clearances which in the judgment of the utility may jeopardize the performance, integrity, reliability or stability of the utility's electrical system or any electrical system with which it is interconnected.

History.

I.C., § 55-2403, as added by 1992, ch. 177,
§ 1, p. 559; am. 2000, ch. 319, § 2, p. 1076.

55-2404. Violations. — (1) Any contractor or agent thereof violating the provisions of this chapter shall be subject to a civil penalty of not more than five hundred dollars (\$500) to be imposed by the court in favor of the state and deposited in the state general account [fund].

(2) If a violation of the provisions of this chapter results in physical or electrical contact with any high voltage overhead line, the contractor committing the violation shall be liable to the public utility owning or operating the high voltage overhead line for all damages to the facilities and all costs and expenses, including damages to third persons, incurred by the public utility as a result of the contact.

(3) County prosecuting attorneys and the attorney general are authorized to prosecute violations of the provisions of this chapter.

History.

I.C., § 55-2404, as added by 1992, ch. 177,
§ 1, p. 559.

STATUTORY NOTES

Cross References.

Attorney general, § 67-1401 et seq.

was added by the compiler to correct the name of the referenced fund. See § 67-1205.

Compiler's Notes.

The bracketed insertion in subsection (1)

55-2405. Exemptions. — The provisions of this chapter shall not apply to:

- (1) Construction, reconstruction, operation or maintenance by an authorized person of overhead electrical or communication circuits or conductors and their supporting structures, or to electrical generating, transmission or distribution systems, or to communication systems;
- (2) Agreements between public agencies to perform any work or undertaking which each public agency entering into the agreement is authorized by law to perform, provided that any such agreement shall be authorized by the governing body of each party to the agreement; or
- (3) Fire, police or other emergency service workers while engaged in emergency operations, or highway districts or other governmental entities performing routine or emergency maintenance in their rights of way.

History.

I.C., § 55-2405, as added by 1992, ch. 177,
§ 1, p. 559.

CHAPTER 25

PROPERTY CONDITION DISCLOSURE ACT

SECTION.

- 55-2501. Short title.
- 55-2502. Legislative intent.
- 55-2503. Definitions.
- 55-2504. Property condition disclosure required.
- 55-2505. Exemptions.
- 55-2506. Disclosure information.
- 55-2507. Mandatory required disclosure statements.
- 55-2508. Disclosure form.
- 55-2509. Delivery of disclosure form and acceptance.
- 55-2510. Delivery requirements.
- 55-2511. Errors, inaccuracies or omissions — Liability of transferor — De-

SECTION.

- livery of information by public agency — Delivery by experts.
- 55-2512. Information subsequently rendered inaccurate — Required information unknown or not available.
- 55-2513. Amendment to form.
- 55-2514. Chapter does not relieve seller or his agent of obligation to disclose other information.
- 55-2515. Rescission by transferee.
- 55-2516. Good faith required.
- 55-2517. Failure to comply.
- 55-2518. Duties of real estate licensees unchanged.

55-2501. Short title. — This chapter may be cited as the “Idaho Property Condition Disclosure Act.”

History.

I.C., § 55-2501, as added by 1994, ch. 366,
§ 1, p. 1172.

55-2502. Legislative intent. — In order to promote the public health, safety and welfare and to protect consumers; it is the purpose of the provisions of this chapter to require sellers of residential real property as defined in this chapter to disclose certain defects in the residential real property to a prospective buyer.

History.

I.C., § 55-2502, as added by 1994, ch. 366,
§ 1, p. 1172.

55-2503. Definitions. — As used in this chapter:

(1) "Political subdivision" has the same meaning as provided in section 7-1303, Idaho Code.

(2) "Residential real property" means real property that is improved by a building or other structure that has one (1) to four (4) dwelling units or an individually owned unit in a structure of any size. This also applies to real property which has a combined residential and commercial use.

(3) "Seller" means the owner of residential real property as defined in this chapter.

History.

I.C., § 55-2503, as added by 1994, ch. 366,
§ 1, p. 1172; am. 1997, ch. 229, § 1, p. 668.

55-2504. Property condition disclosure required. — Any person who intends to transfer any residential real property, including nonowner occupied rental property, on or after July 1, 1994, by any of the methods as set forth herein shall complete all applicable items in a property disclosure form prescribed under section 55-2508, Idaho Code. Except as provided in section 55-2505, Idaho Code, this chapter applies to any transfer by sale, exchange, installment sale contract, a lease with an option to purchase, any other option to purchase, or ground lease coupled with improvements, of real property improved with or consisting of not less than one (1) nor more than four (4) dwelling units.

History.

I.C., § 55-2504, as added by 1994, ch. 366,
§ 1, p. 1172; am. 1997, ch. 229, § 2, p. 668.

55-2505. Exemptions. — The provisions of this chapter do not apply to any transfer of residential real property that is any of the following:

(1) A transfer pursuant to court order including, but not limited to, a transfer ordered by a probate court during the administration of a decedent's estate, a transfer pursuant to a writ of execution, a transfer by a trustee in bankruptcy, a transfer as a result of the exercise of the power of eminent domain, and a transfer that results from a decree for specific performance of a contract or other agreement between persons;

(2) A transfer to a mortgagee by a mortgagor by deed in lieu of foreclosure or in satisfaction of the mortgage debt;

(3) A transfer to a beneficiary of a deed of trust by a trustor in default;

(4) A transfer by a foreclosure sale that follows a default in the satisfaction of an obligation secured by a mortgage;

(5) A transfer by a sale under a power of sale following a default in the satisfaction of an obligation that is secured by a deed of trust or another instrument containing a power of sale occurring within one (1) year of foreclosure on the default;

(6) A transfer by a mortgagee, or a beneficiary under a deed of trust, who has acquired the residential real property at a sale conducted pursuant to a power of sale under a mortgage or a deed of trust or who has acquired the residential real property by a deed in lieu of foreclosure;

- (7) A transfer by a fiduciary in the course of the administration of a decedent's estate, a guardianship, a conservatorship, or a trust;
- (8) A transfer from one (1) co-owner to one (1) or more other co-owners;
- (9) A transfer made to the transferor's spouse or to one (1) or more persons in the lineal line of consanguinity of one (1) or more of the transferors;
- (10) A transfer between spouses or former spouses as a result of a decree of divorce, dissolution of marriage, annulment, or legal separation or as a result of a property settlement agreement incidental to a decree of divorce, dissolution of marriage, annulment, or legal separation;
- (11) A transfer to or from the state, a political subdivision of the state, or another governmental entity;
- (12) A transfer that involved newly constructed residential real property that previously has not been inhabited, except that disclosure of annexation and city service status shall be declared by the sellers of such newly constructed residential real property in accordance with the provisions of section 55-2508, Idaho Code;
- (13) A transfer to a transferee who has occupied the property as a personal residence for one (1) or more years immediately prior to the transfer;
- (14) A transfer from a transferor who both has not occupied the property as a personal residence within one (1) year immediately prior to the transfer and has acquired the property through inheritance or devise;
- (15) A transfer by a relocation company to a transferee within one (1) year from the date that the previous owner occupied the property;
- (16) A transfer from a decedent's estate.

History. § 1, p. 1172; am. 1997, ch. 229, § 3, p. 668;
I.C., § 55-2505, as added by 1994, ch. 366, am. 2002, ch. 333, § 4, p. 939.

STATUTORY NOTES

Compiler's Notes. wherever the words "probate court" are used
The probate court has been abolished. Sec- they shall mean the district court or the
tion 1-103 of the Idaho Code provides that magistrate's division of the district court.

55-2506. Disclosure information. — The information required in this chapter shall be set forth on the form set out in section 55-2508, Idaho Code. Alternative forms may be substituted for those set out in section 55-2508, Idaho Code, provided that alternative forms include the disclosure information as set forth in section 55-2506, Idaho Code, and the mandatory disclosure statements set forth in section 55-2507, Idaho Code. The form must be designed to permit the transferor to disclose material matters relating to the physical condition of the property to be transferred including, but not limited to, the source of water supply to the property; the nature of the sewer system serving the property; the condition of the structure of the property including the roof, foundation, walls and floors; the known presence of hazardous materials or substances.

History.

I.C., § 55-2506, as added by 1994, ch. 366,
§ 1, p. 1172.

JUDICIAL DECISIONS

Cited in: Lindberg v. Roseth, 137 Idaho
222, 46 P.3d 518 (2002).

55-2507. Mandatory required disclosure statements. — To comply with the provisions of this chapter, a form shall set forth a statement of purpose of the form, including statements substantially similar to the following:

(1) The form constitutes a statement of the conditions of the property and of information concerning the property actually known by the transferor.

(2) That unless the transferee is otherwise advised in writing, the transferor, other than having lived at or owning the property possesses no greater knowledge than that which could be obtained by a careful inspection of the property by a potential transferee.

(3) That the statement is not a warranty of any kind by the transferor or by any agent or subsequent agent representing the transferor in this transaction.

(4) That the statement is not a substitute for any inspections.

(5) That the transferor is familiar with the particular residential real property and each act that may be performed in making a disclosure of an item of information shall be made and performed in good faith.

History.

I.C., § 55-2507, as added by 1994, ch. 366,
§ 1, p. 1172.

JUDICIAL DECISIONS

Cited in: Lindberg v. Roseth, 137 Idaho
222, 46 P.3d 518 (2002).

55-2508. Disclosure form. — The disclosures required by the provisions of this article [chapter] pertaining to the property proposed to be transferred are set forth in and shall be made on a copy of the following disclosure form or an alternative form as provided in section 55-2506, Idaho Code:

SELLER PROPERTY DISCLOSURE FORM

SELLER'S NAME AND ADDRESS:

Section 55-2501, et seq., Idaho Code, requires Sellers of residential real property to complete a property condition disclosure form.

PURPOSE OF STATEMENT: This is a statement of the conditions and information concerning the property known by the Seller. Unless otherwise advised, the Seller does not possess any expertise in construction, architectural, engineering or any other specific areas related to the construction or

condition of the improvements on the property. Other than having lived at or owning the property, the Seller possesses no greater knowledge than that which could be obtained upon a careful inspection of the property by the potential buyer. Unless otherwise advised, the Seller has not conducted any inspection of generally inaccessible areas such as the foundation or roof. It is not a warranty of any kind by the Seller or by any agent representing any Seller in this transaction. It is not a substitute for any inspections. Purchaser is encouraged to obtain his/her own professional inspections. Notwithstanding that transfer of newly constructed residential real property that previously has not been inhabited is exempt from disclosure pursuant to section 55-2505, Idaho Code, Sellers of such newly constructed residential real property shall disclose information regarding annexation and city services in the form as prescribed in questions 1., 2. and 3.

1. Is the property located in an area of city impact, adjacent or contiguous to a city limits, and thus legally subject to annexation by the city? Yes No
2. Does the property, if not within city limits, receive any city services, thus making it legally subject to annexation by the city? Yes No
3. Does the property have a written consent to annex recorded in the county recorder's office, thus making it legally subject to annexation by the city? Yes No
4. All appliances and service systems included in the sale, (such as refrigerator/freezer, range/oven, dishwasher, disposal, hood/fan, central vacuum, microwave oven, trash compactor, smoke detectors, tv antenna/dish, fireplace/wood stove, water heater, garage door opener, pool/hot tub, etc.) are functioning properly except: (please list and explain)
.....
5. Specify problems with the following:
Basement water
Foundation
Roof condition and age
Well (type) problem
Septic system (type) problem
Plumbing
Drainage
Electrical
Heating
6. Describe any conditions that may affect your ability to clear title (such as encroachments, easements, zoning violations, lot line disputes, etc.):
.....
7. Are you aware of any hazardous materials or pest infestations on the property?
8. Have any substantial additions or alterations been made without a building permit?
9. Any other problems, including legal, physical or other not listed above that you know concerning the property:

The Seller certifies that the information herein is true and correct to the

best of Seller's knowledge as of the date signed by the Seller. The Seller is familiar with the residential real property and each act performed in making a disclosure of an item of information is made and performed in good faith.

I/we acknowledge receipt of a copy of this statement.

Seller:

Buyer:

.....

.....

Date:

Date:

.....

.....

Date:

Date:

History.

I.C., § 55-2508, as added by 1994, ch. 366,
§ 1, p. 1172; am. 2002, ch. 333, § 5, p. 939.

STATUTORY NOTES

Compiler's Notes.

The bracketed insertion in the introductory paragraph was added by the compiler to correct the internal statutory reference.

The words enclosed in parentheses so appeared in the law as enacted.

55-2509. Delivery of disclosure form and acceptance. — Every transferor shall deliver, in accordance with section 55-2510, Idaho Code, a signed and dated copy of the completed disclosure form to each prospective transferee or his agent within ten (10) days of transferor's acceptance of transferee's offer. Every prospective transferee of residential real property who receives a signed and dated copy of a completed property disclosure form as prescribed under section 55-2508, Idaho Code, shall acknowledge receipt of the form by doing both of the following:

- (1) Signing and dating a copy of the form;
- (2) Delivering a signed and dated copy of the form to the transferor or his agent or subagent.

History.

I.C., § 55-2509, as added by 1994, ch. 366,
§ 1, p. 1172.

55-2510. Delivery requirements. — The transferor's delivery under section 55-2509, Idaho Code, of a property disclosure form as described under section 55-2508, Idaho Code, and the prospective transferee's delivery under section 55-2509, Idaho Code, of an acknowledgement of his receipt of that form shall be made by personal delivery to the other party or his agent or subagent by ordinary mail or certified mail, return receipt requested or by facsimile transmission. For the purposes of the delivery requirements of this section, the delivery of a property disclosure form to a prospective cotransferee of residential real property or his or her agent shall be deemed considered delivered to other prospective transferees unless otherwise provided by contract.

History.

I.C., § 55-2510, as added by 1994, ch. 366,
§ 1, p. 1172.

55-2511. Errors, inaccuracies or omissions — Liability of transferor — Delivery of information by public agency — Delivery by experts. —

(1) Neither the transferor or transferor’s agents shall be liable for any error, inaccuracy or omission of any information delivered pursuant to this chapter if the error, inaccuracy or omission was not within the personal knowledge of the transferor or was based upon information timely provided by public agencies or other persons specified in subsection (3) of this section that is required to be disclosed pursuant to this chapter and ordinary care was exercised in obtaining and transmitting it.

(2) The delivery of any information required to be disclosed by this chapter to a prospective transferee by a public agency or other person providing information required to be disclosed pursuant to this chapter shall be deemed to comply with the requirements of this chapter and shall relieve the transferor or transferor’s agent of any further duty under this chapter with respect to that item of information.

(3) The delivery of a report or opinion prepared by any person or professional who has been hired to perform an inspection of the subject property in connection with the proposed sale shall be sufficient compliance for application of the exemption provided in subsection (1) of this section if the information is provided to the prospective transferee pursuant to a request therefore [therefor], written or oral. In responding to such a request, an expert may indicate, in writing, an understanding that the information provided will be used in fulfilling the requirements of sections 55-2506 and 55-2507, Idaho Code, and if so, shall indicate the required disclosure or parts thereof to which the information being furnished is applicable. Where such a statement is furnished, the provider shall not be responsible for any items of information or parts thereof other than those expressly set forth in the statement.

History.

I.C., § 55-2511, as added by 1994, ch. 366,
§ 1, p. 1172.

STATUTORY NOTES

Compiler’s Notes.

The bracketed insertion in subsection (3) was added by the compiler to supply the probable intended term.

JUDICIAL DECISIONS

Act Not Applicable.

Because the act provided a non-exclusive cause of action for willfully or negligently violating its provisions, the exemption from liability provided by this section only applied to the cause of action created by the act; and where the buyers based their lawsuit upon common-law fraud and breach of warranty in the contract, and did not base their lawsuit upon the act, the exemption from liability provided in this section did not apply. *Lindberg v. Roseth*, 137 Idaho 222, 46 P.3d 518 (2002).

55-2512. Information subsequently rendered inaccurate — Required information unknown or not available. — If information disclosed in accordance with this chapter is subsequently rendered inaccurate as a result of any act, occurrence or agreement subsequent to the delivery of the required disclosures, the inaccuracy resulting therefrom does not constitute a violation of this chapter. If at the time the disclosures are required to be made, an item of information required to be disclosed is unknown or not available to the transferor, and the transferor's agent has made a reasonable effort to ascertain it, the transferor may use an approximation of the information provided the approximation is clearly identified as such, is reasonable, is based on the best information available to the transferor or transferor's agent and is not used for the purpose of circumventing or evading this chapter.

History.

I.C., § 55-2512, as added by 1994, ch. 366,
§ 1, p. 1172.

55-2513. Amendment to form. — Any disclosure of an item of information in the property disclosure form described in section 55-2508, Idaho Code, may be amended in writing by the transferor of the residential real property at any time following the delivery of the form in accordance with section 55-2510, Idaho Code. Transferor shall amend the disclosure statement prior to closing if transferor discovers any of the [the] information on the original statement has changed. In the event of amendments to the statement, transferee's right to rescind is strictly limited to the amendments to the disclosure statement. The amendment shall be subject to the provisions of this chapter.

History.

I.C., § 55-2513, as added by 1994, ch. 366,
§ 1, p. 1172; am. 1997, ch. 229, § 4, p. 668.

STATUTORY NOTES

Compiler's Notes.

The word "the" in the second sentence was enclosed in brackets by the compiler to indi-

cate surplusage in the 1997 amendment of this section.

55-2514. Chapter does not relieve seller or his agent of obligation to disclose other information. — Specification of items of information that must be disclosed in the property disclosure form as prescribed under sections 55-2506 and 55-2507, Idaho Code, does not limit and shall not be construed as limiting any obligation to disclose an item of information that is created by any other section of the Idaho Code or the common law of the state of Idaho. The disclosure requirements of this chapter do not bar and shall not be construed as barring the application of any legal equitable defense that a transferor of residential real property may assert in a civil action commenced against the transferor by a prospective or actual transferee of the property.

History.

I.C., § 55-2514, as added by 1994, ch. 366,
§ 1, p. 1172.

JUDICIAL DECISIONS

Cited in: Lindberg v. Roseth, 137 Idaho
222, 46 P.3d 518 (2002).

55-2515. Rescission by transferee. — Subject to section 55-2504, Idaho Code, if a transferee of residential real property receives a property disclosure form or an amendment of that form as described in section 55-2508, Idaho Code, after the transferee has entered into a transfer agreement with respect to the property, the transferee, after his receipt of the form or amendment may rescind the transfer agreement in a written, signed and dated document that is delivered to the transferor or his agents in accordance with section 55-2510, Idaho Code. Transferee’s rescission must be based on a specific objection to a disclosure in the disclosure statement. The notice of rescission shall specifically identify the disclosure objected to by the transferee. Transferee incurs no legal liability to the transferor because of the rescission including, but not limited to, a civil action for specific performance of the transfer agreement. Upon the rescission of the transfer agreement the transferee is entitled to the return of, and the transferor shall return, any deposits made by the transferee in connection with the proposed transfer of the residential real property.

Subject to the provisions of section 55-2505, Idaho Code, a rescission of a transfer agreement may only occur if the transferee’s written, signed and dated document of rescission is delivered to the transferor or his agent or subagent within three (3) business days following the date on which the transferee or his agent receives the property disclosure form prescribed under section 55-2508, Idaho Code. If no signed notice of rescission is received by the transferor within the three (3) day period, transferee’s right to rescind is waived.

History.

I.C., § 55-2515, as added by 1994, ch. 366,
§ 1, p. 1172; am. 1997, ch. 229, § 5, p. 668.

JUDICIAL DECISIONS

Untimely Request.

Buyer of residential real property was not
entitled to rescission for failure to disclose

because the buyer did not request rescission
promptly. White v. Mock, 140 Idaho 882, 104
P.3d 356 (2004).

55-2516. Good faith required. — Each disclosure required in this chapter and each act which may be performed in making the disclosure shall be made in good faith. For the purposes of this chapter, good faith means honesty in fact, in the conduct of the transaction.

History.

I.C., § 55-2516, as added by 1994, ch. 366,
§ 1, p. 1172.

55-2517. Failure to comply. — No transfer, subject to this chapter, shall be invalidated solely because of the failure of any person to comply with any provision of this chapter. However, any person who willfully or negligently violates or fails to perform any duties prescribed by any provision of this chapter shall be liable in the amount of actual damages suffered by the transferee.

History.

I.C., § 55-2517, as added by 1994, ch. 366,
§ 1, p. 1172.

JUDICIAL DECISIONS

Cited in: *Lindberg v. Roseth*, 137 Idaho
222, 46 P.3d 518 (2002).

55-2518. Duties of real estate licensees unchanged. — Nothing contained in this chapter shall in any way limit or reduce the duties that a real estate licensee owes to his or her client or to the general public.

History.

I.C., § 55-2518, as added by 1994, ch. 366,
§ 1, p. 1172.

CHAPTER 26

SPORT SHOOTING RANGES

SECTION.

- 55-2601. Sport shooting range — Liability for noise pollution.
55-2602. Sport shooting range — Nuisance action — Limitations.
55-2603. Local regulation of sport shooting range.

SECTION.

- 55-2604. Definitions.
55-2605. Preemption of local authority — Noise standards — Zoning.
55-2606. Severability.

55-2601. Sport shooting range — Liability for noise pollution. — (1) Notwithstanding any other provision of law to the contrary, a person who operates or uses a sport shooting range in this state shall not be subject to civil liability or criminal prosecution in any matter relating to noise or noise pollution resulting from the operation or use of the range if the range was established, constructed or operated prior to the implementation of any noise control laws, ordinances, rules or regulations, or if the range is in compliance with any noise control laws, ordinances, rules or regulations that applied to the range and its operation at the time of establishment, construction or initial operation of the range subject to the limitations in section 55-2605, Idaho Code.

(2) Rules or regulations adopted by a state or local department or agency for limiting levels of noise in terms of decibel level which may occur in the outdoor atmosphere shall not apply to a sport shooting range exempted from liability under this act.

(3) A municipal noise control ordinance may not require or be applied so as to require a sport shooting range to limit or eliminate shooting activities

that have occurred on a regular basis at the range prior to the enactment date of the ordinance.

History.

I.C., § 55-2601, as added by 1996, ch. 339, § 1, p. 1139; am. 2008, ch. 318, § 1, p. 879.

STATUTORY NOTES

Amendments.

The 2008 amendment, by ch. 318, added “subject to the limitations in section 55-2605, Idaho Code” in subsection (1).

Compiler’s Notes.

The term “this act” refers to S.L. 1996, ch. 339, which is compiled as §§ 55-2601 to 55-2604.

55-2602. Sport shooting range — Nuisance action — Limitations.

— (1) Except as provided in this section, a person may not maintain a nuisance action for noise against a shooting range located in the vicinity of that person’s property if the shooting range was established as of the date the person acquired the property. If there is a substantial change in use of the range after the person acquires the property, the person may maintain a nuisance action if the action is brought within three (3) years from the beginning of the substantial change.

(2) A person who owns property in the vicinity of a shooting range that was established after the person acquired the property may maintain a nuisance action for noise against that shooting range only if the action is brought within five (5) years after establishment of the range or three (3) years after a substantial change in use of the range.

(3) If there has been no shooting activity at a range for a period of three (3) years, resumption of shooting is considered establishment of a new shooting range for purposes of this section.

History.

I.C., § 55-2602, as added by 1996, ch. 339, § 1, p. 1139.

55-2603. Local regulation of sport shooting range. — (1) Except as

otherwise provided in this act, this act does not prohibit a local unit of government from regulating the location and construction of a sport shooting range after the effective date of this act.

(2) A local unit of government may regulate noise produced as a result of a substantial change in the use of the range.

History.

I.C., § 55-2603, as added by 1996, ch. 339, § 1, p. 1139; am. 2008, ch. 318, § 2, p. 880.

STATUTORY NOTES

Amendments.

The 2008 amendment, by ch. 318, substituted “A local unit of government may regu-

late noise” for “Nothing in this act limits the ability of a local unit of government to regulate noise” in subsection (2).

Compiler's Notes.

The term "this act" refers to S.L. 1996, ch. 339, which is compiled as §§ 55-2601 to 55-2604.

The phrase "effective date of this act", at the end of subsection (1), refers to the effective date of S.L. 1996, chapter 339, which was July 1, 1996.

55-2604. Definitions. — As used in this act:

- (1) "Local unit of government" means a county, city or a town.
- (2) "Person" means an individual, proprietorship, partnership, corporation, club, or other legal entity.
- (3) "Sport shooting range" or "range" means an area designed and operated for the use of rifles, shotguns, pistols, silhouettes, skeet, trap, black powder, archery, or any other similar sport shooting.
- (4) "Outdoor sport shooting range" means any range described in subsection (3) of this section, including any range operated exclusively for the use of law enforcement, with the exception of:
 - (a) Any totally enclosed facility that is designed to offer a totally controlled shooting environment that includes impenetrable walls, floors, and ceilings, adequate ventilation, lighting systems and acoustical treatment for sound attenuation; or
 - (b) Any range described in chapter 91, title 67, Idaho Code.
- (5) "Substantial change in use" means that the current primary use of the range no longer represents the activity previously engaged in at the range. The following actions shall not constitute a substantial change in use:
 - (a) Expanding or increasing membership or opportunities for public or law enforcement participation related to the primary activity as a shooting range;
 - (b) Making repairs or improvements to enhance safety or noise abatement;
 - (c) Increasing events and activities related to the primary activity as a shooting range;
 - (d) Acquiring additional lands to be used for buffer zones or noise mitigation efforts;
 - (e) Establishing or expanding range use hours between 7:00 a.m. and 10:00 p.m.;
 - (f) Establishing or expanding law enforcement agency range use hours between 10:00 p.m. and 7:00 a.m.

History.

I.C., § 55-2604, as added by 1996, ch. 339, § 1, p. 1139; am. 2008, ch. 318, § 3, p. 880.

STATUTORY NOTES**Amendments.**

The 2008 amendment, by ch. 318, added subsections (4) and (5).

339, which is compiled as §§ 55-2601 to 55-2604.

Compiler's Notes.

The term "this act" refers to S.L. 1996, ch.

55-2605. Preemption of local authority — Noise standards — Zoning. — Local governmental law is herein preempted and local govern-

ments shall not have authority to establish or enforce noise standards for outdoor sport shooting ranges, not otherwise exempted from local regulation by this chapter, more restrictive than any standards established for state outdoor shooting ranges in chapter 91, title 67, Idaho Code, nor shall a local government have the authority to make any action described in section 55-2604(5), Idaho Code, a violation of a local zoning ordinance nor shall the undertaking of any such action cause an outdoor sport shooting range to be in violation of any zoning ordinance.

History.

I.C., § 55-2605, as added by 2008, ch. 318,
§ 4, p. 881.

55-2606. Severability. — The provisions of this chapter are hereby declared to be severable and if any provision of this chapter or the application of such provision to any person or circumstance is declared invalid for any reason, such declaration shall not affect the validity of the remaining portions of this chapter.

History.

I.C., § 55-2606, as added by 2008, ch. 318,
§ 5, p. 881.

CHAPTER 27

FLOATING HOMES RESIDENCY ACT

SECTION.

- 55-2701. Short title.
- 55-2702. Legislative policy.
- 55-2703. Good faith.
- 55-2704. Definitions.
- 55-2705. This chapter governs.
- 55-2706. Rental agreement.
- 55-2707. Floating home marina — Rules and regulations.
- 55-2708. Adjustments to rent, services, utilities or rules — Fees.
- 55-2709. Eviction from marina.
- 55-2710. Reasons for eviction — Statement of eviction reasons in notice.

SECTION.

- 55-2711. Eviction to make space for floating home owned by landlord.
- 55-2712. Sale, transfer, or removal of a floating home.
- 55-2713. Notice to owner.
- 55-2714. Tenant action for damages — Specific performance.
- 55-2715. Retaliatory conduct by landlord prohibited.
- 55-2716. Tenant associations.
- 55-2717. Arbitration.
- 55-2718. Penalties.
- 55-2719. Attorney's fees.
- 55-2720. Venue.

55-2701. Short title. — This chapter shall be known as and may be cited as “The Floating Homes Residency Act.”

History.

I.C., § 55-2701, as added by 1998, ch. 194,
§ 1, p. 698.

STATUTORY NOTES

Compiler's Notes.

Chapters 194 and 335 of S.L. 1998 each purported to enact a new chapter 27 in title 55. Chapter 194 was codified as title 55,

chapter 27 (§§ 55-2701 to 55-2720) and chapter 335 was codified as title 55, chapter 28 through the use of brackets. The redesignation of the sections enacted by S.L.

1998, ch. 335 was made permanent by S.L.
2005, ch. 25.

55-2702. Legislative policy. — The legislature finds and declares that, because of current governmental policy limiting the availability of moorage sites both within and outside a floating home marina, the historic value of existing floating homes moored on the waters of the state, the investment in these floating homes and floating home marinas, and the cost of relocating a floating home, it is necessary that the owners of floating homes within a floating home marina be provided with the unique protection from actual or constructive eviction and the other protections afforded by the provisions of this chapter.

History.

I.C., § 55-2702, as added by 1998, ch. 194,
§ 1, p. 698.

55-2703. Good faith. — Every duty under this chapter and every act which must be performed as a condition precedent to the exercise of a right or remedy under this chapter imposes an obligation of good faith in its performance or enforcement.

History.

I.C., § 55-2703, as added by 1998, ch. 194,
§ 1, p. 698.

55-2704. Definitions. — (1) “Floating home” means a floating structure which is designed and built to be used, or is modified to be used, as a stationary waterborne residential dwelling, has no mode or power of its own, is dependent for utilities upon a continuous utility linkage to a source originating on shore, and has a permanent continuous connection to a sewage system on shore.

(2) “Floating home moorage marina” or “moorage” means a waterfront facility for the moorage of one (1) or more floating homes and the land and water premises on which such facility is located.

(3) “Landlord” means the owner of a floating home marina and includes the agent of the landlord.

(4) “Moorage site” means a part of a floating home marina located over water and designed to accommodate one (1) floating home.

(5) “Resident organization” means a tenant or homeowner’s association, whether or not incorporated, the membership of which is made up of tenants of the floating home marina and/or owners of a floating home.

(6) “Tenant” means any person who rents a floating home moorage site or the person’s agent of record.

History.

I.C., § 55-2704, as added by 1998, ch. 194,
§ 1, p. 698.

55-2705. This chapter governs. — This chapter shall regulate and determine legal rights, remedies and obligations arising from any rental

agreement between a landlord and tenant regarding a floating home moorage, except in those instances in which the landlord is renting both the moorage site and the floating home to the tenant. All such rental agreements shall be unenforceable to the extent of any conflict with any provision of this chapter. This chapter does not abrogate any rights the landlord or tenant has under the laws and constitution of the United States and the state of Idaho.

History.

I.C., § 55-2705, as added by 1998, ch. 194,
§ 1, p. 698.

55-2706. Rental agreement. — (1) From and after the effective date of this chapter, any landlord offering a moorage site for rent shall provide the prospective tenant with a written agreement. This agreement must be executed by both parties. The provisions of this chapter shall apply to all such agreements to the extent applicable as set forth in this chapter.

(2) The requirements of subsection (1) of this section shall not apply if:

(a) The floating home marina or a part thereof has been acquired by eminent domain or condemnation for a public works project; or

(b) An employer-employee relationship exists between a landlord and tenant.

(3) The provisions of this section shall apply to any tenancy in existence on the effective date of this act, but only after expiration of the term of any oral or written rental agreement governing such tenancy, not to exceed twelve (12) months from the effective date of this act. Existing contracts may be perpetuated by agreement of both parties.

(4) A floating home owner shall be offered a rental agreement for:

(a) A term of twelve (12) months;

(b) A lesser period as mutually agreed upon by both the floating home owner and the landlord; or

(c) A longer period as mutually agreed upon by both the floating home owner and the landlord.

(5) A rental agreement may not contain a provision by which the tenant waives his rights under this law.

(6) The rental agreement shall identify a specific moorage site. The moorage site occupied by a floating home shall remain site specific as set forth in the rental agreement unless any moorage site change is agreed upon by the tenant and the landlord.

History.

I.C., § 55-2706, as added by 1998, ch. 194,
§ 1, p. 698.

STATUTORY NOTES

Compiler's Notes.

The phrase "the effective date of this chapter" in subsection (1) and the phrase "the

effective date of this act" in subsection (3) refer to the effective date of S.L. 1998, ch. 194, which was July 1, 1998.

55-2707. Floating home marina — Rules and regulations. —

(1) Subject to the provisions of this chapter and to the terms of the rental agreement, the landlord may establish reasonable rules and regulations governing the use and occupancy of a floating home marina. A rule or regulation may be amended at any time with the consent of the tenants or without their consent upon written notice of not less than six (6) months. Written notice of a proposed amendment to a new tenant whose tenancy commences within the required period of notice shall constitute compliance with this subsection where the written notice is given to the tenant before the inception of this tenancy.

(2) The landlord may enter a floating home in case of an apparent or actual emergency, when the tenant has abandoned the floating home, or as otherwise provided in the rental agreement.

(3) Management must disclose the name and address of the marina owner upon the request of the tenant.

History.

I.C., § 55-2707, as added by 1998, ch. 194,
§ 1, p. 698.

55-2708. Adjustments to rent, services, utilities or rules — Fees.

— (1) A landlord may increase or decrease rents only after ninety (90) days' written notice to the tenants.

(2) Rental rates shall at all times be reasonable. Factors to be considered in determining whether a change in rent is reasonable are as follows:

(a) The rent provided in previous and current rental agreements between the landlord and tenant;

(b) The rent charged by comparable marinas, taking into account such factors as location, facilities, condition, services and other relevant factors;

(c) The landlord's costs associated with owning, controlling and maintaining the marina, including the uplands, to the extent reasonably necessary to support the marina facilities which serve the floating home, moorage area and the landlord's need for realizing a reasonable rate of return over such costs;

(d) The availability and costs of alternative long-term float home moorage sites;

(e) The need to maintain price stability in a market restricted by state regulation of navigable waters and limited availability of float home moorage sites;

(f) The opportunity costs, if any, borne by the landlord by not converting the floating home marina, including uplands, to other uses; and

(g) Any other circumstances justifying a rental rate.

(3) If twenty-five percent (25%) or more of the tenants within a marina, or the [the] marina owner, assert that a moorage rental increase is unreasonable under any circumstances, the dispute shall be resolved by arbitration. The tenants must appoint a single party to act as their agent in the arbitration proceeding.

(a) The tenants' agent and the marina owner shall mutually agree upon

one (1) or more arbitrators. If the parties cannot mutually agree upon one (1) or more arbitrators, the parties may petition the district court in the judicial district in which the marina in question is situated, which shall appoint an arbitrator or panel of arbitrators for the parties.

(b) In determining what constitutes a reasonable increase in a moorage rental rate the arbitrator shall consider and make written findings on each of the factors set forth in subsection (2) of this section.

(c) The arbitrator shall afford any party to the arbitration an opportunity to be heard, if requested, as provided herein.

(i) A hearing may be requested by a party requesting arbitration by including the request for hearing in the request for arbitration;

(ii) Other parties to the arbitration may request a hearing within five (5) business days after service upon them of the request for arbitration;

(iii) The hearing may be informal in nature provided the arbitrator adopts a hearing procedure that reasonably affords each party to the arbitration an opportunity to be heard;

(iv) The arbitrator shall issue written findings and conclusions within sixty (60) days of the appointment of the arbitrator, unless such time is extended by the written stipulation of the parties or upon a finding by the arbitrator that additional time is reasonably required;

(v) The costs of arbitration and the fees of the arbitrator shall be paid one-half (1/2) by the tenants and one-half (1/2) by the marina owner.

(4) Except as provided herein, rental increases shall be uniform throughout the floating home marina. Notwithstanding the foregoing provision:

(a) When rents within a floating home marina are structured by reason of slip or floating home size, amenities, slip location or otherwise, rental increases shall be uniform among all floating homes in the same rent tier; and

(b) A rental agreement may include an escalation clause for a pro rata share of any increase or decrease in the floating home marina's property taxes, utility assessments or other services as included in the monthly rental charge, after the effective date of such a change.

(5) No fees may be charged except for rent, services and utilities actually provided.

(6) No fees can be charged for services unless the services are listed in the rental agreement or unless ninety (90) days' notice is given.

(7) A tenant shall not be charged a fee for the enforcement of any of the rules and regulations of the floating home marina, except as provided in the rental agreement or rules and regulations of the floating home marina.

(8) Unless the tenant specifically requests the service from the landlord in writing, a tenant shall not be charged a fee for entry, installation, hookup or improvements as a condition of tenancy except for an actual fee or cost imposed by a local governmental ordinance or requirement directly related to the occupancy of the specific moorage site where the floating home is located and incurred as a portion of the development of the floating home marina as a whole. However, reasonable improvements and maintenance requirements may be included in the floating home marina rules and regulations. The landlord shall not require a tenant or prospective tenant to

purchase, rent or lease goods or services for improvements from any person, company or corporation.

(9) Where the landlord provides master meter utilities to a tenant, the cost of the utilities must be separately stated each billing period along with the opening and closing meter readings. The landlord must also post the current rates charged by the utility in at least one (1) conspicuous place in the floating home marina.

(10) The landlord shall maintain year round facilities for garbage and trash disposal from the floating home marina.

(11) The landlord shall maintain entry lights and common area lighting, if any, in good working order.

(12) The landlord shall not prevent the ingress or egress to watercraft moorage contained within a floating home.

History.

I.C., § 55-2708, as added by 1998, ch. 194,
§ 1, p. 698; am. 2008, ch. 303, § 1, p. 842.

STATUTORY NOTES

Amendments.

The 2008 amendment, by ch. 303, added subsections (2) and (3), and redesignated the subsequent subsections accordingly.

graph in subsection (3), as the word was inadvertently repeated in S.L. 2008, ch. 303, § 1.

Compiler's Notes.

Brackets were placed around the repeating instance of "the" in the introductory para-

Effective Dates.

Section 2 of S.L. 2008, ch. 303 declared an emergency. Approved March 28, 2008.

55-2709. Eviction from marina. — The landlord shall not terminate or refuse to renew a tenancy, except for a reason specified in this chapter and upon the giving of not less than ninety (90) days' written notice to the tenant in the manner prescribed by this section, to remove the floating home from the floating home marina within a period of not less than ninety (90) days, which period shall be specified in the notice. A copy of this notice shall be served upon the legal owner of the floating home either by:

- (1) Personally serving a copy of the notice upon the legal owner; or
- (2) Mailing a copy of the notice to the last known address of the legal owner and posting the notice conspicuously upon the floating home residence.

History.

I.C., § 55-2709, as added by 1998, ch. 194,
§ 1, p. 698.

55-2710. Reasons for eviction — Statement of eviction reasons in notice. — (1) The grounds for which a tenancy may be terminated and a tenant evicted shall be:

- (a) Conduct by tenant or tenant's guest which constitutes a nuisance to other floating home owners, marina tenants or marina owner;
- (b) Substantial or repeated violation of the reasonable rules and regulations of the marina;
- (c) Nonpayment of rent;

- (d) Other material breach of a rental agreement; or
- (e) Condemnation of the marina.

(2) The landlord shall set forth in a notice of termination the reason relied upon for the termination with sufficient specificity to permit determination of the date, place, witnesses, if any, and circumstances concerning such reason. Reference to a section or subsection or a recital of the language of this chapter shall not constitute compliance with this section.

(3) In the case of termination of the tenancy and eviction for the reasons set out in paragraphs (a), (b), (c) or (d) of subsection (1) of this section, the tenant shall be given written notice to comply which notice may be given by personal service upon a tenant, or if the tenant cannot be found at the marina, then by mailing a copy of the notice by certified mail to the last mailing address provided by the tenant. In the case of personal service, service of the notice shall be deemed effected three (3) days after deposit in the United States mail, postage prepaid by registered mail, return receipt requested. If the tenant does not comply within fifteen (15) days following service, landlord may give notice of termination as provided in this chapter.

History.

I.C., § 55-2710, as added by 1998, ch. 194,
§ 1, p. 698.

55-2711. Eviction to make space for floating home owned by landlord. — No tenancy shall be terminated for the purpose of making a moorage site available for the landlord or a person who purchases a floating home from the owner of the floating home marina or his agent.

History.

I.C., § 55-2711, as added by 1998, ch. 194,
§ 1, p. 698.

55-2712. Sale, transfer, or removal of a floating home. — (1) No landlord shall deny any tenant who owns his floating home the right to sell a floating home on a rented moorage site or require the tenant to remove the floating home for the moorage site solely on the basis of the sale.

(2) The landlord shall not exact a commission or a fee for the sale of a floating home on a rented moorage site unless the landlord has acted as an agent for the seller pursuant to a written agreement. The landlord may act as an agent for the seller only upon the voluntary agreement of the seller.

(3) The new rental agreement must be signed by the landlord and a prospective tenant prior to the sale, transfer, assignment or subletting of the floating home if the floating home is to remain at the floating home marina. From the date of sale, assignment, transfer or subletting, the new tenant shall be bound by the agreement.

(4) No floating home shall be removed from any floating home marina until the rental payment, including the month when the floating home is removed, is paid, or until the provisions of section 55-2713, Idaho Code, have been fully complied with and the landlord notified of the date and time of removal.

(5) A tenant shall notify the landlord in writing ninety (90) days prior to

the expiration of a rental agreement of an intention not to renew the rental agreement.

History.

I.C., § 55-2712, as added by 1998, ch. 194,
§ 1, p. 698.

55-2713. Notice to owner. — (1) Any legal owner of a floating home in order to be protected under this section must notify the landlord in writing of his secured or other legal interest.

(2) If the tenant becomes sixty (60) days in arrears in his rent or at the time of the suspected abandonment by the tenant of a moorage site, the landlord shall notify the legal owner of the floating home of his liability for any costs incurred for the floating home site for such floating home, including rent owing. The legal owner shall be responsible for utilities from the date of notice. Any and all costs shall, after the giving of such notice, become the responsibility of the legal owner of the floating home. The floating home may not be removed from the moorage site without a signed written receipt or agreement from the landlord, owner, or manager showing payment of charges due or agreement with the legal owner for removal of the floating home.

History.

I.C., § 55-2713, as added by 1998, ch. 194,
§ 1, p. 698.

55-2714. Tenant action for damages — Specific performance. —

(1) A tenant of a floating home marina may file an action against a landlord for damages and specific performance for:

- (a) Failure to maintain in good working order, to the terminal point of service, electrical, water or sewer services supplied by the landlord;
- (b) Maintaining those portions of the premises open to use by the tenant in a manner hazardous to the health or safety of the tenant including, but not limited to, a continuing violation of any of the following:

- (i) Any rule adopted by the department of environmental quality governing public drinking water systems;
- (ii) Any rule adopted by the department of environmental quality governing hazardous waste;
- (iii) Any rule adopted by the public health district in which the floating home marina is located governing wastewater and on-site sewage treatment systems;
- (iv) Any provisions of the international fire code, as amended by the provisions of a fire code adopted by the county or municipality in which the floating home marina is located;
- (v) Any provisions of the uniform building code, as amended by the provisions of any building code adopted by the state, county or municipality in which the floating home marina is located.

- (c) Material breach of any specific term of a rental agreement.

(2) Upon filing the complaint, a summons must be issued, served and returned as in other actions. Provided however, that in an action exclusively

for specific performance, at the time of issuance of the summons, the court shall schedule a trial within twelve (12) days from the filing of the complaint, and the service of the summons, complaint and trial setting on the defendant shall be not less than five (5) days before the day of trial appointed by the court. If the plaintiff brings an action for damages with an action for specific performance, the early trial provision shall not be applicable, and a summons must be issued returnable as in other cases upon filing the complaint.

(3) In an action under this section, the plaintiff, in his complaint, must set forth facts on which he seeks to recover, describe the premises, and set forth any circumstances which may have accompanied the failure or breach by the landlord.

(4) If upon the trial, the verdict of the jury, or, if the case be tried without a jury, the finding of the court, be in favor of the plaintiff against the defendant, judgment shall be entered for such special damages as may be proven. General damages may be awarded but shall not exceed five hundred dollars (\$500). Judgment may also be entered requiring specific performance for any breach of agreement shown by the evidence and for costs and disbursements.

(5) Before a tenant shall have standing to file an action under this section, he must give his landlord three (3) days' written notice, listing each failure or breach upon which his action will be premised and written demand requiring performance or cure. If, within three (3) days after service of the notice, any listed failure or breach has not been performed or cured by the landlord, or in the event of damage to the premises or other default not capable of cure within three (3) days and the landlord has not provided written assurance to the tenant that a cure will be effected within a reasonable time, the tenant may proceed to commence an action for damages and specific performance.

(6) The notice required in subsection (5) of this section shall be served either:

- (a) By delivering a copy to the landlord or his agent personally; or
- (b) By leaving a copy with an employee at the usual place of business of the landlord or his agent if the landlord or his agent is absent from his usual place of business; or
- (c) By sending a copy of the notice to the landlord or his agent by certified mail, return receipt requested.

(7) Nothing in this section shall bar either the landlord or the tenant from bringing such civil action for relief to which said party is otherwise entitled.

History.

I.C., § 55-2714, as added by 1998, ch. 194,

§ 1, p. 698; am. 2001, ch. 103, § 96, p. 243;
am. 2002, ch. 86, § 12, p. 195.

STATUTORY NOTES**Cross References.**

Department of environmental quality, § 39-104.

Local adoption of international building code, § 39-4116.

Compiler's Notes.

The international fire code is promulgated by the international code council, which is dedicated to building safety and fire prevention. See <http://www.iccsafe.org>.

55-2715. Retaliatory conduct by landlord prohibited. — The landlord shall not terminate a tenancy, refuse to renew a tenancy, increase rent or decrease service he normally supplies, or threaten to bring an action for repossession of a floating home site as retaliation against the tenant because the tenant has:

(1) Complained in good faith about a violation of a building, safety or health code or regulation pertaining to a floating home marina to the governmental agency responsible for enforcing the code or regulation.

(2) Complained to the landlord concerning the maintenance or condition of the marina, rent charged, or rules and regulations.

(3) Organized, became a member of or served as an official in a homeowner's association, or similar organization, at a local, regional, state or national level.

(4) Retained counsel or an agent to represent his interests.

History.

I.C., § 55-2715, as added by 1998, ch. 194,
§ 1, p. 698.

55-2716. Tenant associations. — (1) The tenants in a floating home marina have the right to organize a tenant or homeowner's association to further their mutual interests and to conduct any other business and programs which the association shall determine. When an association is organized it shall notify the landlord.

(2) The landlord must meet and confer with homeowners or their representatives, including any persons designated by a resident organization, within thirty (30) days of a request concerning:

- (a) Rule changes;
- (b) Maintenance of facilities;
- (c) Addition or deletion of services or facilities; or
- (d) Rental agreements.

History.

I.C., § 55-2716, as added by 1998, ch. 194,
§ 1, p. 698.

55-2717. Arbitration. — The landlord and tenant may agree in writing to submit a controversy under the provisions of this chapter to arbitration through the better business bureau, or similar private association or as otherwise provided in Idaho law.

History.

I.C., § 55-2717, as added by 1998, ch. 194,
§ 1, p. 698.

STATUTORY NOTES

Compiler's Notes.

To find a better business bureau serving

Idaho, see <http://snake-river.bbb.org/find-a-bbb>.

55-2718. Penalties. — If upon the trial of any action brought under the

provisions of section 55-2714, Idaho Code, or those of section 6-303, Idaho Code, the court shall find that the defendant acted with malice, wantonness, or oppression, judgment may be entered for three (3) times the amount at which actual damages are assessed.

History.

I.C., § 55-2718, as added by 1998, ch. 194,
§ 1, p. 698.

55-2719. Attorney's fees. — In any action brought under the provisions of this chapter, or those of section 6-302 or 6-303, Idaho Code, except in those cases where treble damages are awarded, the prevailing party shall be entitled to an award of attorney's fees.

History.

I.C., § 55-2719, as added by 1998, ch. 194,
§ 1, p. 698.

55-2720. Venue. — Venue for any action arising under this chapter shall be in the district court of the county in which the floating home marina is located.

History.

I.C., § 55-2720, as added by 1998, ch. 194,
§ 1, p. 698.

CHAPTER 28

PSYCHOLOGICALLY IMPACTED REAL PROPERTY

SECTION.

55-2801. Psychologically impacted defined.
55-2802. No cause of action.

SECTION.

55-2803. Request for disclosure.

55-2801. Psychologically impacted defined. — As used in this chapter, “psychologically impacted” means the effect of certain circumstances surrounding real property which include, but are not limited to, the fact or suspicion that real property might be or is impacted as a result of facts or suspicions including, but not limited to the following:

(1) That an occupant or prior occupant of the real property is or was at any time suspected of being infected or has been infected with a disease which has been determined by medical evidence to be highly unlikely to be transmitted through the occupancy of a dwelling place; or

(2) That the real property was at any time suspected of being the site of suicide, homicide or the commission of a felony which had no effect on the physical condition of the property or its environment or the structures located thereon; or

(3) That a registered or suspected sex offender occupied or resides near the property.

History.

I.C., § 55-2701, as added by 1998, ch. 335, § 1, p. 1080; am. and redesign. 2005, ch. 25,
§ 109, p. 82.

STATUTORY NOTES

Compiler's Notes.

Chapters 194 and 335 of S.L. 1998 each purported to enact a new chapter 27 in title 55. Accordingly, chapter 194 was codified as title 55, chapter 27 (§§ 55-2701 to 55-2720)

and chapter 335 was codified as title 55, chapter 28 through the use of brackets. The redesignation of the sections enacted by S.L. 1998, ch. 335 was made permanent by S.L. 2005, ch. 25.

JUDICIAL DECISIONS

Property Not Psychologically Impacted.

Buyer of residential real property was not entitled to recover damages from the sellers for failure to disclose water intrusion that led

to mold growth where stigma damages were not available under this chapter for non-toxic mold. *White v. Mock*, 140 Idaho 882, 104 P.3d 356 (2004).

55-2802. No cause of action. — No cause of action shall arise against an owner of real property or a representative of the owner for a failure to disclose to the transferee of the real property or a representative of the transferee that the real property was psychologically impacted.

History.

I.C., § 55-2702, as added by 1998, ch. 335,

§ 1, p. 1080; am. and redesign. 2005, ch. 25, § 110, p. 82.

JUDICIAL DECISIONS

No Remedy Available.

Buyer of residential real property was not entitled to recover damages from the sellers for failure to disclose water intrusion that led

to mold growth where stigma damages were not available under this chapter for non-toxic mold. *White v. Mock*, 140 Idaho 882, 104 P.3d 356 (2004).

55-2803. Request for disclosure. — In the event that a purchaser who is in the process of making a bona fide offer advises the owner's representative in writing that knowledge of whether the property may be psychologically impacted is an important factor in the purchaser's decision to purchase the property, the owner's representative shall make inquiry of the owner and, with the consent of the owner and subject to and consistent with the applicable laws of privacy, shall report any findings to the purchaser. If the owner refuses disclosure, the owner's representative shall advise the purchaser or the purchaser's representative that the information will not be disclosed.

History.

I.C., § 55-2703, as added by 1998, ch. 335,

§ 1, p. 1080; am. and redesign. 2005, ch. 25, § 111, p. 82.

CHAPTER 29

EMERGENCY COMMUNICATIONS PRESERVATION

SECTION.

55-2901. Short title.

55-2902. Purpose.

55-2903. Definitions.

SECTION.

55-2904. Antenna support structures — Antennas — Restrictions on local units of government.

55-2901. Short title. — This chapter shall be known and may be cited as “The Emergency Communications Preservation Act.”

History.

I.C., § 55-2901, as added by 2001, ch. 316,
§ 1, p. 1125.

55-2902. Purpose. — The purpose of this chapter is to preserve the capability of amateur radio operators within the state of Idaho to provide radio communications in times of emergency and disaster.

History.

I.C., § 55-2902, as added by 2001, ch. 316,
§ 1, p. 1125.

55-2903. Definitions. — When used in this act:

(1) “Antenna” means any array of wires, tubing or similar materials used for the transmission and reception of radio waves.

(2) “Antenna support structure” or “tower” means a structure or framework that is designed to elevate an antenna above the ground for the purpose of increasing the effective communications range and reliability of an amateur radio station.

(3) “Amateur radio” means the use of amateur and amateur-satellite radio frequencies and services used by licensed, qualified persons of any age who are interested in radio technique without pecuniary remuneration. These services present an opportunity for public service, emergency communications, self-training, intercommunication and technical investigations.

(4) “Amateur radio operator” means any person who has been duly examined and licensed by the federal communications commission or its designee for the operation of transmitting and receiving apparatus on radio frequencies internationally agreed upon for the use of the amateur radio service.

(5) “Local unit of government” means a county, city or town.

History.

I.C., § 55-2903, as added by 2001, ch. 316,
§ 1, p. 1125.

STATUTORY NOTES

Compiler’s Notes.

The term “this act”, in the introductory paragraph, refers to S.L. 2001, chapter 316, which is codified as §§ 55-2901 to 55-2904.

For more on licensing of amateur radio service, see <http://wireless.fcc.gov/services/index.htm?job=licensing&id=amateur>.

55-2904. Antenna support structures — Antennas — Restrictions on local units of government. — Any rule or ordinance of a local unit of government involving the placement, screening or height of antennas and towers based on health, safety or aesthetic considerations must be crafted to reasonably accommodate amateur radio communications and to represent

the minimum practicable regulation to accomplish a legitimate purpose of the local unit of government.

History.

I.C., § 55-2904, as added by 2001, ch. 316,
§ 1, p. 1125.

CHAPTER 30

UNIFORM ENVIRONMENTAL COVENANTS ACT

SECTION.

- 55-3001. Short title.
- 55-3002. Definitions.
- 55-3003. Nature of rights — Subordination of interests.
- 55-3004. Contents of environmental covenant.
- 55-3005. Validity — Effect on other instruments.
- 55-3006. Relationship to other land use law.
- 55-3007. Notice.
- 55-3008. Recording.
- 55-3009. Duration — Amendment by court action.

SECTION.

- 55-3010. Amendment or termination by consent.
- 55-3011. Enforcement of environmental covenant.
- 55-3012. Registry — Substitute notice.
- 55-3013. Uniformity of application and construction.
- 55-3014. Relation to electronic signatures in global and national commerce act.
- 55-3015. Severability.

55-3001. Short title. — This chapter shall be known and may be cited as the “Uniform Environmental Covenants Act.”

History.

I.C., § 55-3001, as added by 2006, ch. 15,
§ 1, p. 34.

COMMENT TO OFFICIAL TEXT

PREFATORY NOTE

Environmental covenants — whether called “institutional controls”, “land use controls” or some other term — are increasingly being used as part of the environmental remediation process for contaminated real property. An environmental covenant typically is used when the real property is to be cleaned up to a level determined by the potential environmental risks posed by a particular use, rather than to unrestricted use standards. Such risk-based remediation is both environmentally and economically preferable in many circumstances, although it will often allow the parties to leave residual contamination in the real property. An environmental covenant is then used to implement this risk-based cleanup by controlling the potential risks presented by that residual contamination.

Two principal policies are served by confirming the validity of environmental covenants. One is to ensure that land use restrictions, mandated environmental monitoring

requirements, and a wide range of common engineering controls designed to control the potential environmental risk of residual contamination will be reflected on the land records and effectively enforced over time as a valid real property servitude. This Act addresses a variety of common law doctrines — the same doctrines that led to adoption of the Uniform Conservation Easement Act — that cast doubt on such enforceability.

A second important policy served by this Act is the return of previously contaminated property, often located in urban areas, to the stream of commerce. The environmental and real property legal communities have often been unable to identify a common set of principles applicable to such properties. The frequent result has been that these properties do not attract interested purchasers and therefore remain vacant, blighted and unproductive. This is an undesirable outcome for communities seeking to return once important commercial sites to productive use.

Large numbers of contaminated sites are unlikely to be successfully recycled until regulators, potentially responsible parties, affected communities, prospective purchasers and their lenders become confident that environmental covenants will be properly drafted, implemented, monitored and enforced for so long as needed. This Act should encourage transfer of ownership and property re-use by offering a clear and objective process for creating, modifying or terminating environmental covenants and for recording these actions in recorded instruments which will be reflected in the title abstract of the property in question.

Of course, risk-based remediation must effectively control the potential risk presented by the residual contamination that remains in the real property and thereby protect human health and the environment. When risk-based remediation imposes restrictions on how the property may be used after the cleanup, requires continued monitoring of the site, or requires construction of permanent containment or other remedial structures on the site, environmental covenants are crucial tools to make these restrictions and requirements effective. Yet environmental covenants can do so only if their legal status under state property law and their practical enforceability are assured, as this proposed Uniform Act seeks to do.

At the time this Act was promulgated, approximately half the states had laws providing for land use restrictions in conjunction with risk-based remedies. Those existing laws vary greatly in scope — some simply note the need for land use restrictions, while others create tools similar to many of the legal structures envisioned by this Act. Most such acts apply only to cleanups under a state program.

In contrast, this Act includes a number of provisions absent from most existing state laws, including the Act's applicability to both federal and state-led cleanups. For example, this Act expressly precludes the application of traditional common law doctrines that might hinder enforcement. It ensures that a covenant will survive despite tax lien foreclosure, adverse possession, and marketable title statutes. The Act also provides detailed provisions regarding termination and amendment of older covenants, and includes important provisions on dealing with recorded interests that have priority over the new covenant. Further, it offers guidance to courts confronted with a proceeding that seeks to terminate such a covenant through eminent domain or the doctrine of changed circumstances.

This Act benefitted greatly during the drafting process from broad stakeholder input. As a result, the Act contains unique provisions designed to protect a variety of interests com-

monly absent in existing state laws. For example, the Act confers on property owners that grant an environmental covenant the right to enforce the covenant and requires their consent to any termination or modification. This should mitigate an owner's future liability concerns for residual contamination and encourage the sale and reuse of contaminated properties. And, following traditional real property principles, the Act validates the interests of lenders who hold a prior mortgage on the contaminated property, absent voluntary subordination.

It is important to emphasize that environmental covenants are but one tool in a larger context of environmental remediation regulation; remediation is typically overseen by a government agency enforcing substantial statutory and regulatory requirements. The covenant should be the crucial end result of that process — it may be used to ensure that the activity and use limitations imposed in the agency's remedial decision process remain effective, and thus protect the public from residual contamination that remains, while also permitting re-use of the site in a timely and economically valuable way.

Environmental remediation projects may be done in a widely diverse array of contamination fact patterns and regulatory contexts. For example, the remediation may be done at a large industrial operating or waste disposal site. In such a situation, the cleanup could be done under federal law and regulation, such as the Comprehensive Environmental Response Compensation and Liability Act ("CERCLA") or the Resource Conservation and Recovery Act ("RCRA"). Generally speaking, CERCLA and RCRA would also apply to remediation done at Department of Defense or Department of Energy sites that are anticipated to be transferred out of federal ownership.

In other situations, state law and regulation will be an effective regulatory framework for remediation projects. State law is given a role to play in the federal environmental policy discussed above. Beyond this, state law may be the primary source of regulatory authority for many remediation projects. These may include larger sites and will often include smaller, typically urban, sites. In addition, many states authorize and supervise voluntary cleanup efforts, and these also may find environmental covenants a useful policy tool. With both state and federal environmental remediation projects, the applicable cleanup statutes and regulations will provide the basis for the restrictions and controls to be included in the resulting environmental covenants.

This Act does not supplant or impose substantive clean-up standards, either generally or in a particular case. The Act assumes those

standards will be developed in a prior regulatory proceeding. Rather, the Act is intended to validate site-specific, environmental use restrictions resulting from an environmental response project that proposes to leave residual contamination in the ground in any of the different situations described above. Once the governing regulatory authority and the property owner have determined to use a risk-based approach to cleanup to protect the public from residual contamination, this Act supplies the legal infrastructure for creating and enforcing the environmental covenant under state law.

This Act does not require issuance of regulations. However, many state and federal agencies have developed implementation tools, including model covenants, statements of best practices, and advisory groups that include members of the real property and environmental practice bars as well as business and environmental groups. Developing and sharing such implementation tools and the advice of such advisory groups should support the effective implementation of the Act and is encouraged.

This Act does not address or change the larger context of environmental remediation regulation discussed above, and a number of aspects of that regulation should be noted here.

First, many contaminated properties are subject to the concurrent regulatory jurisdiction of both federal and state agencies. This Act does not address the exercise of such concurrent jurisdiction, and it is not intended to limit the jurisdiction of any state agency.

A specific issue arises with federal property that is not anticipated to be transferred to a non-federal owner. This Act takes no position regarding the question of whether remediation of such property is subject to State regulatory jurisdiction. In contrast, where federal property is transferred to a non-federal owner, state agencies will clearly

have jurisdiction over environmental covenants on the transferred property where state environmental law so provides.

Second, potential purchasers of property subject to an environmental covenant should be aware that both state and federal environmental law other than this Act may authorize reopening the environmental remediation determination, even after the relevant statutory standards have been met on that site. While such reopeners are rare, they may be possible to respond either to newly-discovered contamination or new scientific knowledge of the risk posed by existing contamination. As a consequence, under existing environmental law, the then-current owner may have remediation liability. While the dampening effect of such potential liability on the willingness of potential purchasers to buy contaminated property is clear, the issue remains important in the eyes of some interest groups. Federal law now provides protection for bona fide purchasers of such property under specified circumstances, and the law of some states may also afford some protection. However, this Act does not provide any such bona fide purchaser protection.

For these and other reasons, it is important that prospective purchasers of contaminated properties — particularly those successors who may buy some years after a clean-up has been completed — have actual knowledge of covenants at the time of purchase. Environmental covenants recorded pursuant to this Act will provide constructive notice of the covenant and in many circumstances recording will provide actual notice. However, to ensure that such persons have actual notice, a state or a local recording authority may wish to highlight the existence of environmental covenants in their communities with maps showing the location of properties subject to environmental covenants, similar to the kinds of maps commonly found in local land records offices to show the location of zoning districts or flood plains.

LEGISLATIVE NOTES

Non Participating Owner. This Act contemplates a situation where a risk based clean-up is agreed to by the regulatory agency and the parties responsible for the clean-up, potentially including the fee owner and the owners of other interests in the property. As a consequence of that agreement, the Act assumes those parties will each negotiate the terms of and then sign the covenant.

The Act assumes the owners of appropriate interests in contaminated property will be willing to sign the covenant. Cooperation is not always possible, however. State and federal regulatory systems make a number of parties, in addition to the current owner of a

fee simple or some other interests, potentially liable for the cost of remediation of contaminated real property. As a result, a remediation project may proceed even though an owner is no longer present or interested in the property. In those circumstances, the remediation project would be conducted pursuant to regulatory orders and could be financed either by other liable parties or by public funds. However, an environmental covenant may still be a useful tool in implementing the remediation project even in these situations.

When an owner is either unavailable or unwilling to participate in the environmental response project, it may be appropriate to

condemn and take a partial interest in the real property in order to be able to record a valid servitude on it. Under the law of some states, states have the power to take that owner's interest by condemnation proceedings, paying the value of the interest taken, and then enter an environmental covenant as an owner. Where there is substantial contamination, the property may have little or no market value. In some states the court would take the cost of remediation into account in establishing the fair market value of the interest taken. See, e.g., *Northeast Ct. Economic Alliance, Inc. v. ATC Partnership*, 256 Conn. 813, 776 A.2d 1068 (2001). Although effective implementation of this Act may require that the state have a power of condemnation, this Act does not provide a substantive statutory basis for that power, and the state must therefore rely on other state law. Each state considering adoption of this Act should ensure that such a condemnation power is available for this purpose.

Similarly, while this Act provides substantive law governing creation, modification, and termination of environmental covenants, it does not include special administrative procedures for these and does not change the remedial decision making process. Rather, the Act presumes that the state's general administrative law or any specific procedure governing the environmental response project would apply to these activities.

“Actual” versus “Constructive” Notice of Contamination. The primary goal of the Act is to present to the states a statute that fully integrates environmental covenants into the traditional real property system. It seeks to ensure the long-term viability of those covenants by, among other means, providing constructive notice of those covenants to the

world through resort to the land recording system.

Beyond that goal, it is very important to provide actual knowledge of the remaining contaminated conditions that the environmental covenants are designed to control. A broad range of stakeholders — children and adults that might inadvertently gain access to the contamination, tenants on the property, owners, abutting neighbors, prospective buyers, lenders, government officials, title insurance companies, public health providers and others — will have a real personal and financial stake in knowing what properties in their communities suffer from contamination and the extent of the risks they confront. The fact that this law may provide legally sufficient knowledge of those conditions is no substitute for real information regarding those conditions.

The challenge of providing that information is beyond the scope of this Act. However, in analogous situations — the location of zoning districts, flood plain boundaries, utility easements, and dangerous street conditions, for example — governments have devised techniques to make the public aware of those conditions on a continuing basis. Techniques such as maps in recorders' offices, on-site signage and monuments and, increasingly, computer databases accessible to the public are examples of possible solutions. All such devices have fiscal implications and are best addressed on a local basis. Over the long term, however, the public will likely be well served by innovative solutions to these issues.

Legislative Policy. Finally, this Act does not include a section of policy and legislative findings, although some states may choose to use such a section. If such a section is desired, the Colorado Statute, CRS §25-15-317, may be an appropriate model.

55-3002. Definitions. — As used in this chapter:

(1) “Activity and use limitations” means restrictions or obligations created under this chapter with respect to real property.

(2) “Agency” means the Idaho department of environmental quality or any other state or federal agency that determines or approves the environmental response project pursuant to which the environmental covenant is created.

(3) “Common interest community” means a condominium, cooperative, or other real property with respect to which a person, by virtue of the person's ownership of a parcel of real property, is obligated to pay property taxes or insurance premiums, or for maintenance, or improvement of other real property described in a recorded covenant that creates the common interest community.

(4) “Environmental covenant” means a servitude arising under an environmental response project that imposes activity and use limitations.

(5) "Environmental response project" means a plan or work performed for environmental remediation of real property and conducted:

- (a) Under a federal or state program governing environmental remediation of real property;
- (b) Incident to closure of a solid or hazardous waste management unit, if the closure is conducted with approval of an agency; or
- (c) Under an authorized state voluntary cleanup program.

(6) "Holder" means the grantee of an environmental covenant as specified in section 55-3003(1), Idaho Code.

(7) "Person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, public corporation, government, governmental subdivision, agency, or instrumentality, or any other legal or commercial entity.

(8) "Record," used as a noun, means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(9) "State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.

History.

I.C., § 55-3002, as added by 2006, ch. 15, § 1, p. 34.

STATUTORY NOTES

Cross References.

Department of environmental quality, § 39-104.

COMMENT TO OFFICIAL TEXT

1. The following are examples of subsection (1) activity and use limitations:

(1) a prohibition or limitation of one or more uses of or activities on the real property, including restrictions on residential use, drilling for or pumping groundwater, or interference with activity and use limitations or other remedies,

(2) an activity required to be conducted on the real property, including monitoring, reporting, or operating procedures and maintenance for physical controls or devices,

(3) any right of access necessary to implement the activity and use limitations, and

(4) any physical structure or device required to be placed on the real property.

The specific activity and use limitations in any covenant will depend on the nature of the proceeding in the environmental response project that led to the covenant. For example, in a major environmental response project where the administrative process was conducted by either a state or federal agency, the activity and use limitations would generally

be identified in the record of decision and then implemented in the environmental covenant pursuant to this Act. In contrast, in a voluntary clean-up supervised by privately licensed professionals, as authorized in some states, the activity and use limitations would not be developed by the agency during an administrative proceeding but by the parties themselves and their contracted professionals.

Nothing in this Act prevents the use of privately negotiated use restrictions which are recorded in the land records, without agency involvement: the validity of such covenants, however, is not governed by this Act but by other law of the enacting state. See Section 5(d) [§ 55-3005(4)].

2. The governmental body with responsibility for the environmental response project in question is the agency under this Act. Generally, this agency will supply the public supervision necessary to protect human health and the environment in creating and modifying the environmental covenant.

In addition, as noted in Comment 1, the definition of "environmental response project"

contemplates the possibility that the project may be undertaken pursuant to a voluntary clean-up program, where the actual determination of the sufficiency of the proposed clean-up is made by a private professional party, rather than an agency. In this case, the definition contemplates that an agency — typically, the state environmental agency — will nevertheless be asked to consent to the environmental covenant by signing it. Section 4 [§ 55-3004] of the Act makes clear that the covenant is not valid under this Act unless an agency signs it. Section 3 [§ 55-3003] of the Act makes clear that the mere signature of the agency, without more, means only that the agency has “approved” the covenant in order to satisfy the definitional requirements of definition (2) and the mandated contents of Section 4 [§ 55-3004]. That signature imposes no duties or obligations on the agency.

3. The agency, for purposes of this Act, may be either a federal government entity or the appropriate state regulatory agency for environmental protection.

Further, in some cases, the appropriate federal agency may be the Environmental Protection Agency, the Department of Defense as ‘lead agency’ under federal law, or another body.

4. Section 4 [§ 55-3004] of the Act makes clear that an environmental covenant is valid if only one agency signs it. However, in many circumstances, both a federal and a state agency may have jurisdiction over the environmental contamination that led to the environmental response project. In this situation, the best practice may be for both federal and state agencies with jurisdiction over the contaminated property to sign the environmental covenant.

5. Definition (4) states that an environmental covenant is a “servitude”; the term generally refers to either a burden or restriction on the use of real property, or to a benefit that flows from the ownership of land, that in either case “runs with the land” — that is, the benefit or the burden passes to successive owners of the real property.

The law of servitudes is a long established body of real property law. The term is defined in §1.1 of the Restatement (3d) of Servitudes as follows: “(1) A servitude is a legal device that creates a right or an obligation that runs with land or an interest in land.” The Restatement goes on to provide that the forms of servitudes which are subject to that Restatement are “easements, profits, and covenants.”

This Act emphasizes that an environmental covenant is a servitude in order to implicate this full body of real property law and to sustain the validity and enforceability of the covenant. By first characterizing the environmental covenant as a servitude, the Act expressly avoids the argument that an environ-

mental covenant is simply a personal common law contract between the agency and the owner of the real property at the time the covenant is signed, and thus is not binding on later owners or tenants of that land.

6. The definition of “environmental covenant” also provides that the servitude is created to implement an environmental response project. An environmental response project may determine, in some circumstances, to leave some residual contamination on the real property. This may be done because complete cleanup is technologically impossible, or because it is either ecologically or economically undesirable. In this situation, the environmental response project may impose activity and use limitations to control residual risk that results from contamination remaining in real property. An environmental covenant is then recorded on the land records as required by Section 8 [§ 55-3008] to ensure that the activity and use limitations are both legally and practically enforceable.

7. An “environmental response project” covered by definition (5) may be undertaken pursuant to authorization by one of several different statutes. Definition (5)(a) specifically covers remediation projects required under state law. However, the definition is written broadly to also encompass both current federal law, future amendments to both state and federal law, as well as new environmental protection regimes should they be developed. Without limiting this breadth and generality, the Act intends to reach environmental response projects undertaken pursuant to any of the following specific federal statutes:

(1) Subchapter III or IX of the federal “Resource Conservation and Recovery Act of 1976”, 42 U.S.C. sec. 6921 to 6939e and 6991 to 6991i, as amended;

(2) Section 7002 or 7003 of the federal “Resource Conservation and Recovery Act of 1976”, 42 U.S.C. sec. 6972 and 6973, as amended;

(3) “Comprehensive Environmental Response, Compensation, and Liability Act of 1980”, 42 U.S.C. sec. 9601 to 9647, as amended;

(4) “Uranium Mill Tailings Radiation Control Act of 1978”, 42 U.S.C. sec. 7901 et seq., as amended;

(5) “Toxic Substances Control Act”, 15 U.S.C. 2601 to 2692, as amended;

(6) “Safe Drinking Water Act”, 42 U.S.C. 300f to 300j-26, as amended;

(7) “Atomic Energy Act”, 42 U.S.C. 2011 et seq., as amended.

8. Definition (5)(c) extends the Act’s coverage to voluntary remediation projects that are undertaken under state law. Environmental covenants that are part of voluntary remediation projects may serve both the goal of environmental protection and the goal of

facilitating reuse of the real property. However, approval of these projects by a governmental body or other authorized party ensures that the project serves these goals. Even though preparation of the clean-up plan and supervision of the work may be undertaken by private parties, this Act requires that covenants undertaken as part of a formal voluntary clean-up program must be approved by the agency as evidenced by the agency's signature on the covenant, in order to be effective under this Act.

9. Some states authorize properly certified private parties to supervise remediation to pre-existing standards and certify the cleanup. For example, in Connecticut and Massachusetts, these are "licensed site professionals". See, e.g., M.G.L. ch. 21A §19; 310 CMR 40.1071; C.G.S. §§22a-133o, 22a-133y. Supervision and certification by statutorily-authorized parties is intended to accomplish the same public function as supervision and certification by the governmental entity. Thus, these environmental response projects are also covered by this definition.

10. Under definition (5)(c), environmental response projects may include specific agreements between an owner and the agency for remediation that go beyond prevailing requirements. Alternatively, an owner may choose to contract with a potential purchaser for additional use restrictions in an instrument that does not purport to come within this Act; see Section 5(d) [§ 55-3005(4)]. Because the owner may have residual liability for the site, even after remediation and transfer to a third party for redevelopment, the owner may require further restrictions as a condition of creating the environmental covenant and eventual reuse of the real property.

11. The definition of "holder" is in definition (6). As the practice of using environmental covenants continues to grow, new entities may emerge to serve as holders. This Act does not intend to limit this process. A holder may be any person under the broad definition of this Act, including an affected local government, the agency, or an owner. The identity of an individual holder must be approved by the agency and an owner as part of the process of creating an environmental covenant, as specified in Section 4 [§ 55-3004]. A holder is authorized to enforce the covenant under Section 11 [§ 55-3011]. A holder has the rights specified in Section 4 [§ 55-3004] of this Act and may be given additional rights or obligations in the environmental covenant.

Section 3(a) [§ 55-3003(1)] makes clear that a holder's interest is an interest in real property. Some environmental enforcement agencies are not authorized by their enabling legislation to own an interest in real property after the environmental remediation is completed. As a consequence, those agencies may

not be entitled to serve as holders under the Act. In those cases where an agency wishes to be certain that a viable holder exists, a private entity may serve this purpose, acting, for example by contract, in accordance with the agency's direction.

More generally, the nature of a holder's interest in the real property may influence whether its rights and duties with respect to the real property are likely to lead to potential liability for future environmental remediation, should such remediation become necessary. Under CERCLA, an "owner" is liable for remediation costs; see 42 U.S.C.A. 9607(a)(1). Unfortunately, the definition of "owner" in the statute is circular and unhelpful in evaluating whether a holder is potentially liable under it. 42 U.S.C.A. 9601(20).

In general, a holder's right to enforce the covenant under Section 11 [§ 55-3011] should be considered comparable to the rights covered in an easement and, thus, should not lead to a determination that the holder is liable as an "owner" under CERCLA. The two cases that have considered this question have found that the parties which held the easements were not CERCLA "owners". *Long Beach Unified School District v. Dorothy B. Godwin California Living Trust*, 32 F.3d 1364 (9th Cir. 1994); *Grand Trunk RR. V. Acme Belt Recoating*, 859 F. Supp. 1125 (W.D. MI 1994). In each case, the court reasoned that the circular definition of owner meant that the term's most common meaning would prevail. The common law's distinction between an easement holder and the property owner was then applied to find the easement holder not to be an "owner" for purposes of this statute. In each of these cases, the party that held the easement had not contributed to contamination on the property. The amendments to CERCLA Section 9601(35), Small Business Liability Relief and Brownfields Revitalization Act, Pub. L. No. 107-118, 115 Stat. 2360 (2002) (HR 2869, 107th Cong. 1st Session), added the term "easement" to the definition of parties which are in a "contractual relationship" under CERCLA. However, this does not affect whether the easement holder will be held to be a CERCLA "owner".

Where the holder or another person has more extensive rights than enforcement, a careful analysis will be required. The CERCLA liability cases typically emphasize that a party that exercises the degree of control over a site equivalent to the control typically exercised by an owner of the site will be held liable as an "owner". Under this approach, for example, lessees have been held liable as owners when their control over the site approximated that which an owner would have. See, e.g., *Delaney v. Town of Carmel*, 55 F. Supp. 2d 237 (S.D.N.Y. 1999); *U.S. v. A & N Cleaners and Launderers*, 788 F. Supp. 1317

(S.D.N.Y. 1992); *U.S. v. S.C. Dept. of Health and Env. Control*, 653 F. Supp. 984 (D.S.C. 1984.) Accordingly, a holder contemplating extensive control over the site should consider potential “owner” liability carefully.

CERCLA liability also extends to an “operator” of the site (42 U.S.C.A. 9607(a)(1)), and the case law interpreting this definition emphasizes that a party is liable as an operator if it has a high degree of control over the

operating decisions and day to day management at the site. Thus, for example, a party that held an easement could be liable as an operator if its degree of control met this standard. A holder will, in general, have only control authority over the site related to effective enforcement of the environmental covenant and does not typically need more extensive day to day control. However, this will not likely be true in all cases.

55-3003. Nature of rights — Subordination of interests. — (1) Any person, including a person that owns an interest in the real property, the agency, or a municipality or other unit of local government, may be a holder. An environmental covenant may identify more than one (1) holder. The interest of a holder is an interest in real property.

(2) A right of an agency under this chapter or under an environmental covenant, other than a right as a holder, is not an interest in real property.

(3) An agency is bound by any obligation it assumes in an environmental covenant, but an agency does not assume obligations merely by signing an environmental covenant. Any other person that signs an environmental covenant is bound by the obligations the person assumes in the covenant, but signing the covenant does not change obligations, rights, or protections granted or imposed under law other than this chapter except as provided in the covenant.

(4) The following rules apply to interests in real property in existence at the time an environmental covenant is created or amended:

(a) An interest that has priority under other law is not affected by an environmental covenant unless the person that owns the interest subordinates that interest to the covenant.

(b) This chapter does not require a person that owns a prior interest to subordinate that interest to an environmental covenant or to agree to be bound by the covenant.

(c) A subordination agreement may be contained in an environmental covenant covering real property or in a separate record. If the environmental covenant covers commonly owned property in a common interest community, the record may be signed by any person authorized by the governing board of the owners’ association.

(d) An agreement by a person to subordinate a prior interest to an environmental covenant affects the priority of that person’s interest but does not by itself impose any affirmative obligation on the person with respect to the environmental covenant.

History.

I.C., § 55-3003, as added by 2006, ch. 15,
§ 1, p. 34.

COMMENT TO OFFICIAL TEXT

Subsection (a) [(1)] confirms that the holder holds an interest in real property, thus distinguishing that right from a personal or con-

tractual right that does not run with the land. The definition of ‘holder’ in Section 2 [§ 55-3002], departing from traditional real prop-

erty concepts, makes clear that the holder may be the agency or the owner, thus making it possible for the owner to be both grantor and grantee.

Subsection (a) [(1)] also makes clear that if the agency chooses to be the holder, the agency will thereby hold an interest in the real property. Otherwise, subsection (b) [(2)] provides that the agency's interest in the covenant as a consequence of signing the covenant or having a right to enforce it under this Act is not an interest in real property.

Subsection (c) [(3)] validates and confirms any contractual obligations that an agency may assume in an environmental covenant. So, for example, if the agency were to agree to authorize certain activities on the property, to undertake periodic inspections of the site or to provide notice of particular actions to specified persons, those undertakings and obligations would be enforceable against the agency in accordance with their terms by parties adversely affected by any breach.

At the same time, subsection (c) [(3)] also makes clear that the mere act of signing the covenant in order to signify the agency's 'approval' of the covenant, which is required by the Act as a condition of its effectiveness under this Act, is not an assumption of obligations and the agency has not thereby exposed itself to any liability. The agency manifests its approval of an environmental covenant by signing it.

Subsection (d) [(4)] restates and clarifies traditional real property rules regarding the effect of an environmental covenant on prior recorded interests. The basic rule remains that pre-existing prior valid and effective interests — "First in time, first in right" — remain valid. As § 7.1 of the Restatement (3d) of Property: Mortgages states:

A valid foreclosure of a mortgage terminates all interests in the foreclosed real estate that are junior [that is, later in time] to the mortgage being foreclosed Foreclosure does not terminate interests ... that are senior

At the same time, it is not uncommon for interested parties to re-order the priorities among them by agreement in order to accommodate the economic interests of various par-

ties. The usual device used to re-order priorities is a so-called 'subordination' agreement. Again, this section tracks the outcome suggested in *The Restatement (3d) of Property: Mortgages*. Section 7.7 of the Restatement provides in pertinent part that:

A mortgage, by a declaration of its mortgagee, [that is, the lender] may be made subordinate in priority to another interest in the mortgaged real estate, whether existing or to be created in the future A subordination that would materially prejudice the mortgagor [that is, the owner of the real estate] or the person whose interest is advanced in priority is ineffective without the consent of the person prejudiced.

The impact of the newly recorded environmental covenant on the priorities of other lien holders is sufficiently important that the Act emphasizes this issue both in this section and in Sections 8(b) and 9(c) [§§ 55-3008(2) and 55-3009(3)]. In all these instances, the Act provides that the usual rules of priorities are preserved, except in the case of foreclosure of tax liens.

Thus, in preparing an environmental covenant, it might be advisable for the agency to identify all prior interests, determine which interests may interfere with the covenant protecting human health and the environment, and then take steps to avoid the possibility of such interference. The agency may do this by, for example, having the parties obtain appropriate subordination of prior interests, as a condition to the agency's approval of the environmental covenant.

The combined effect of Sections 3, 8 and 9 [§§ 55-3003, 55-3008, and 55-3009] creates a curious "circular" lien problem, where (1) foreclosure of a 2003 municipal tax lien would terminate a 2000 pre-existing mortgage (the usual outcome), but (2) that same foreclosure would not affect the environmental covenant created in 2002 under this Act; while (3) foreclosure of the 2000 pre-existing mortgage would terminate the 2002 environmental covenant (again, the usual rule), but (4) not the 2003 municipal tax lien (also, the usual rule). Circular liens, however, are not unique to this situation.

55-3004. Contents of environmental covenant. — (1) An environmental covenant must:

- (a) State that the instrument is an environmental covenant executed pursuant to this chapter;
- (b) Contain a legally sufficient description of the real property subject to the covenant;
- (c) Describe the activity and use limitations on the real property;

- (d) Identify every holder;
 - (e) Be signed by the agency, every holder, and unless waived by the agency every owner of the fee simple of the real property subject to the covenant; and
 - (f) Identify the name and location of any administrative record for the environmental response project reflected in the environmental covenant.
- (2) In addition to the information required by subsection (1) of this section, an environmental covenant may contain other information, restrictions, and requirements agreed to by the persons who signed it, including any:
- (a) Requirements for notice following transfer of a specified interest in, or concerning proposed changes in use of, applications for building permits for, or proposals for any site work affecting the contamination on, the property subject to the covenant;
 - (b) Requirements for periodic reporting describing compliance with the covenant;
 - (c) Rights of access to the property granted in connection with implementation or enforcement of the covenant;
 - (d) A brief narrative description of the contamination and remedy, including the contaminants of concern, the pathways of exposure, limits on exposure, and the location and extent of the contamination;
 - (e) Limitation on amendment or termination of the covenant in addition to those contained in sections 55-3009 and 55-3010, Idaho Code; and
 - (f) Rights of the holder in addition to its right to enforce the covenant pursuant to section 55-3011, Idaho Code.
- (3) In addition to other conditions for its approval of an environmental covenant, the agency may require those persons specified by the agency who have interests in the real property to sign the covenant.

History.

I.C., § 55-3004, as added by 2006, ch. 15,
§ 1, p. 34.

COMMENT TO OFFICIAL TEXT

1. Subsection (a)(2) [(1)(b)] of this section requires that the covenant contain a “legally sufficient description” of the “real property” subject to the covenant. While these terms are familiar to real property practitioners, it may be useful to describe precisely what is required by this section.

First, a description of the real property that is “legally sufficient” will depend upon the practice of the enacting state. The purpose of such a requirement, for the real property practitioner, will be to assure that the particular parcel subject to the covenant will be properly indexed in the land records and thus readily located during the course of a title search. This, in turn, will enable a buyer, lender or other interest holder to be confident of what they own or hold as security.

The most commonly used legal descriptions

of land are: (1) a metes and bounds description — that is, a description that begins with reference to a known point on the surface of the earth, followed by references to distances and angles from that point to other monuments or terminals that mark the outer boundaries of the parcel; (2) reference to a recorded map or survey, that contains a “picture” of the metes and bounds description; (3) reference to a particular parcel number on a governmental grid system; and (4) a coordinates reference system, derived from a Global Positioning System or other mapping tool. These, and other generally obsolete forms of legal description [e.g., “starting at the black oak tree in the pasture, then running along a stone wall to Bloody Creek, then generally south and west along the creek to a dirt road, then back to the tree where you started, being

the same 50 acres, more or less, conveyed to my father by Lisman"] may all serve the same purpose, and would meet the requirement of being "legally sufficient."

In contrast, as described in Comment 11 below, more precise measurements may be very useful for identifying precisely the "geospatial" location of sub-surface contaminants.

Second, the "real property" that is subject to the covenant may be narrowly or broadly defined, depending on the wishes of the parties. It may be, for example, that only a 3 acre portion of a 5,000 acre ranch is contaminated; in such a case, it may be unnecessary to describe all 5000 acres of real property as being subject to the covenant.

Alternatively, in a remote location, it may be that the 3 acre contaminated parcel owned by one person may be reached only by crossing a private road located on a 5000 acre ranch owned by another person. In such a case, a careful property description will want to include reference to the easement or other access right across the land owned by another person.

It is important to recognize, however, that real property is a three-dimensional concept (or a four-dimensional concept when one considers time as a dimension). A legal description of a particular parcel of real property which has only perimeter boundaries and no upper and lower boundaries encompasses both the surface of the earth within those boundaries, the airspace above the surface, all the dirt and minerals below the surface and all spaces within that volume of space that may be filled with water. Thus, in appropriate cases, a title searcher will need to be sensitive to cases where interests in the "real property" or "real property" have been sold or leased which leave the owner with less than all of the real property. A ten-year lease of the entire parcel, for example, represents a time-defined "boundary" to the owner's interest in the real property in question. An agency seeking to identify all the interests in the parcel in order to secure their approval of a covenant will therefore want to ensure that a title search identifies all these interests.

2. This Act does not provide the standards for environmental remediation nor the specific activity and use limitations to be used at a particular site. Those will be provided by the state or federal agency based on other state and federal law governing mandatory and voluntary cleanups. This Act contemplates that those standards will then be incorporated into the environmental response project, which, in turn, will call for activity and use restrictions that can be implemented through creation of an environmental covenant. This section addresses creation of the environmental covenants.

3. Ordinarily, an environmental covenant will be created only by agreement between the agency and the owner. If there is a holder other than the agency or the owner, both the agency and the owner must approve the holder, and the holder must agree to the terms of the covenant. The agency may refuse to agree to an environmental covenant if it does not effectively implement the activity and use limitations specified in the environmental response project.

Where no owner is available or willing to participate in the environmental response project, it may be necessary for the agency to condemn and take an interest sufficient to record an environmental covenant on the property where it has the power to do so. This Act does not contain independent condemnation authority for the agency. Alternatively, in some states, there may be a basis for an agency to require an owner to cooperate with the implementation of the covenant as a regulatory matter.

4. This Act recognizes that there may be situations in which there is more than one fee simple owner. For example, Husband and Wife may own Blackacre as tenants in common, joint tenants, or tenants of the entirety. In all of these configurations of ownership, both Husband and Wife are owners of Blackacre and both must sign an environmental covenant unless the agency waives this requirement.

Similarly, it is common practice in mining states, such as Kentucky, West Virginia, Pennsylvania, for the fee ownership of the mineral interests to be conveyed separate and apart from the fee ownership of the remaining parcel. Thus, under the conventional real property practices of these states, there may be two separate fee ownership interests in the same "parcel" of real property, and each owner must sign the environmental covenant unless this requirement is waived. It may be that those two owners of different interests in the same parcel have an agreement between them prohibiting separate conveyances of interests in the land without permission of the other. However, if that agreement does not appear of record, it would not run with the land, would likely not be binding on the agency [in the absence of the agency's actual knowledge] and thus not affect the validity of a covenant signed by one of the owners with respect to that owner's interest in the real estate.

5. In addition to the parties specified in Section 4(a)(5) [§ 55-3004(1)(e)], other persons may wish to sign the environmental covenant and, in any event, the agency may require their signature as a condition of approving the covenant. (See Section 4(c) [§ 55-3004(3)]). Under current law, persons other than the owner may be liable for cleanup of

the contamination, including contingent future liability if further cleanup is needed or personal injury claims are brought. These could be parties which previously used the property or whose waste was disposed of on the property. Such a person may have liability for some or all of the cost of the environmental response project and may thus have a compelling interest in signing the covenant so as to be informed of future enforcement, modification and termination.

6. Section 4(a)(5) [§ 55-3004(1)(e)] also authorizes the agency to waive the requirement that the covenant be signed by the owner of the fee simple. The Act contemplates that such waivers should be rare because in most situations the covenant can be effective only if the fee owner's interest is subject to the covenant. However, in some circumstances the fee owner may have transferred most or all of the economic value of the property to the holder of another interest, either permanently or for the time period during which the covenant's restrictions are needed. Consider, for example, the situation in which the contamination remaining presents environmental risks for only twenty years and the property is subject to a ninety-nine year lease. In this case, it is critical that the owner of the leasehold interest be a party to the covenant so its interest will be subject to it. However, in this situation, the fee owner's participation is not essential for the covenant to protect human health and the environment. If the fee owner is unavailable or unwilling to participate, the agency might choose to waive its signature. Of course, such a situation, when the likely duration of the covenant is both short and clearly known, is likely to be exceptional.

7. A holder is the grantee of the environmental covenant and the Act requires that there be a holder for a covenant to be valid and enforceable. Under Section 5(b)(9) [§ 55-3009(2)(i)], the grantee may also be the grantor, who is the owner of the property and who might remain a holder upon sale of the property, or the agency. In addition to enforcement rights, the holder may be given specific rights or obligations with respect to future implementation of the environmental covenant. These could include, for example, the obligation to monitor groundwater or maintain a cap or containment structure on the property. Such rights and obligations will be specified in the environmental covenant and, like any obligations, would be enforceable against the holder if the holder failed to satisfy its obligations.

8. Section 4(a)(5) [§ 55-3004(1)(e)] requires an agency to sign the covenant. In some states it may be necessary to amend the state agency's enabling statute to empower it to so sign.

9. Section 4(a)(6) [§ 55-3004(1)(f)] requires the covenant to disclose the "name and location of any administrative record" for the underlying environmental response project. Typically, this information will require a docket or file number, identifying names of the parties, and an indication of the agency office in which the record of decision or other administrative record has been retained. In those cases where a state-wide registry is maintained, the registry also requires this information. In the case of voluntary cleanups, of course, there may not be an administrative record.

Section 4(b) [§ 55-3004(2)] is a permissive provision intended by the breadth of its provisions ("... may contain other information ... agreed to by the persons who signed it.") to encourage the agency and the other parties to include provisions in the particular covenant that are tailored to the specific needs of that project. This may well be accomplished in order to maximize the likelihood that the covenant, when properly implemented and monitored, will protect human health and the environment.

Persons dealing with this Act must recognize that no statute and no commentary can fully contemplate all the possibilities that are likely to arise in implementation of this Act. This issue permeates this subsection. In (b)(1) [(2)(a)], for example, the text contemplates the possibility that the agency may, in a particular case, require an owner or other persons to notify the agency before, among other things, that party applies for "... building permits." The suggested language is not intended to exclude notice of any other type of work permit that might trigger a violation of an environmental covenant, such as, for example, drilling or excavation permits.

10. Section 4(b)(4) [§ 55-3004(2)(d)] suggests that, in an appropriate case, the agency may wish to provide a summary of the contamination on the site and the remedial solutions that have been identified. From a public health perspective, this may be very useful. The reference to "pathways of exposure" requires a statement that, for example, the contaminant might be of danger if it comes in contact with skin, if breathed, or only if ingested.

11. Section 4(b)(4) [§ 55-3004(2)(d)] also suggests that, in an appropriate case, the agency may require the covenant to contain not only a legally sufficient description of the real property subject to the covenant (as mandated under section 4(a)(2)) [§ 55-3004(1)(b)] but also the "location of the contamination."

One way of identifying such location is by the concept of "geospatial" location as defined by the Federal Geographic Data Committee of the U.S. Geological Survey. Such an identification would define the location with

geospatial data, which the Committee defines as follows:

Geospatial Data: Information that identifies the geographic location and characteristics of natural or constructed features and boundaries on the Earth. This information may be derived from, among other things, remote sensing, mapping, and surveying technologies. Statistical data may be included in this definition....

Depending on the nature of the contamination and the size of the parcel subject to the covenant, a description of the "geospatial location" of the contamination and the legal boundary description of the real property parcel on which those contaminants are located may be very different, and the kinds of information required to usefully describe the "location" of the contamination may also differ. As a simple example, it may be appropriate to use grid coordinates and projected elevations below ground level to define the upper and lower levels of a groundwater contamination plume, together with sensing or other data that projects the mobility of that plume over time, in order to accurately provide useful information that a simple metes and bounds description could not convey.

12. Subsection (b)(5) [(2)(e)] contemplates that the environmental covenant may impose additional restrictions on amendment or termination beyond those required by this Act. For example, in some circumstances the owner or another party who may have contingent residual liability for further cleanup of the real property subject to the environmental covenant, may seek further restrictions in the covenant to protect against this contingent liability.

13. Subsection (c) [(3)] confirms that the agency is under no obligation to approve a particular environmental covenant by signing it. This may be particularly significant in those cases where the agency was unable to secure subordination of prior interests in the real property which is proposed to be subject to the covenant. If a prior security or other interest is not subordinated to the environ-

mental covenant, and then is foreclosed at some later time, under traditional real property law that foreclosure would extinguish or limit an environmental covenant. Since such an outcome is antithetical to the policies underlying this Act, the Act contemplates that the agency may, before agreeing to the covenant, require subordination of these interests. At the time of creation of the environmental covenant, the agency must determine whether the prior interest presents a realistic threat to the covenant's ability to protect the environment and human health. Section 3 [§ 55-3003] of the Act makes clear that by subordinating its interest, an owner of a prior interest does not change its liability with respect to the property subject to the environmental covenant. Any such liability of a subordinating party would arise by operation of other law and not under this Act.

Subsection (c) [(3)] contemplates that there are many circumstances that might cause an agency, in the exercise of its regulatory discretion as defined in other law, either to refuse to sign a covenant in the form presented, or to agree to sign it only upon satisfaction of specified conditions. The listing of the following examples is intended to be illustrative, not exhaustive.

Example 1: As a condition of signing the covenant, the agency requires the owner to provide an abstract of title of the property to be subjected to the covenant. If the owner declines to do so, the agency may reasonably be expected to decline to approve the covenant, since it will have insufficient evidence of the priority of its new covenant.

Example 2: The owner provides the title abstract, which discloses that the property to be subjected to the covenant is presently subject to a first mortgage for \$5 million. The agency's decision to condition its approval on the first lender's willingness to subordinate to the covenant would plainly be appropriate.

Example 3: The agency's policies require that an independent company regularly engaged in the business of monitoring and enforcing environmental covenants on behalf of the agency be named as 'holder' in the covenant. The owner's refusal to agree to such a provision would justify an agency's refusal to approve the covenant.

55-3005. Validity — Effect on other instruments. — (1) An environmental covenant that complies with this chapter runs with the land.

(2) An environmental covenant that is otherwise effective is valid and enforceable even if:

(a) It is not appurtenant to an interest in real property;

(b) It can be or has been assigned to a person other than the original holder;

- (c) It is not of a character that has been recognized traditionally at common law;
- (d) It imposes a negative burden;
- (e) It imposes an affirmative obligation on a person having an interest in the real property or on the holder;
- (f) The benefit or burden does not touch or concern real property;
- (g) There is no privity of estate or contract;
- (h) The holder dies, ceases to exist, resigns, or is replaced; or
- (i) The owner of an interest subject to the environmental covenant and the holder are the same person.

(3) An instrument that creates restrictions or obligations with respect to real property that would qualify as activity and use limitations except for the fact that the instrument was recorded before July 1, 2006, is not invalid or unenforceable because of any of the limitations on enforcement of interests described in subsection (2) of this section or because it was identified as an easement, servitude, deed restriction, or other interest. This chapter does not apply in any other respect to such an instrument.

(4) This chapter does not invalidate or render unenforceable any interest, whether designated as an environmental covenant or other interest, that is otherwise enforceable under the law of this state.

History.

I.C., § 55-3005, as added by 2006, ch. 15,
§ 1, p. 34.

COMMENT TO OFFICIAL TEXT

1. Subsection (a) [(1)], when considered with the common law, makes clear that environmental covenants will be binding not only on the persons who originally negotiate them but also on subsequent owners of the property and others who hold an interest in the property, such as tenants, so long as those owners and others have actual or constructive knowledge of the covenant.

To be binding on future owners who may not have actual knowledge of the covenant, the Act requires that the covenant comply with all provisions of the Act. Section 8(a) [§ 55-3008(1)] of this Act requires the covenant to be recorded. The Act then states the usual real property rule that a recorded instrument “runs with the land” and binds all who have an interest in it.

2. Recording requirements are an important means by which the law protects ‘bona fide purchasers’ — BFP’s — who acquire property without knowledge of its conditions. Even in the absence of recording a document on the land records, the common law has long held that those who have actual knowledge of the document take title subject to the document. The BFP, on the other hand, is bound at common law only by an instrument affecting the real property to the extent the BFP has constructive knowledge of the document.

Importantly, a BFP is charged with constructive knowledge of the land records. In some respects, one of the fundamental tensions between traditional real property law and environmental law is the change in this rule, by which environmental law seeks to impose liability on “innocent” purchasers of contaminated property who take without knowledge of the property’s condition and may have no practical means of learning of its condition. To the extent this Act tracks traditional real property practice by requiring recorded covenants, this tension may be considerably lessened.

3. Subsection (b) [(2)] and its comments are modeled on Section 4 of the Uniform Conservation Easement Act. One of the Environmental Covenant Act’s basic goals is to remove common law defenses that could impede the use of environmental covenants. This section addresses that goal by comprehensively identifying these defenses and negating their applicability to environmental covenants.

This Act’s policy supports the enforceability of environmental covenants by precluding applicability of doctrines, including older common law doctrines, that would limit enforcement. That policy is broadly consistent with the Restatement of the Law Third of Property (Servitudes), including §2.6 and chapter 3.

For specific doctrines see §§ 2.4 (horizontal privity), 2.5 (benefitted or burdened estates), 2.6 (benefits in gross and third party benefits), 3.2 (touch and concern doctrine), 3.3 (rule against perpetuities), and 3.5 (indirect restraints on alienation).

Subsection (b)(1) [(2)(a)] provides that an environmental covenant, the benefit of which is held in gross, may be enforced against the grantor or his successors or assigns. By stating that the covenant need not be appurtenant to an interest in real property, it eliminates the requirement in force in some states that the holder of an easement must own an interest in real property (the "dominant estate") benefitted by the easement.

Subsection (b)(2) [(2)(b)] also clarifies existing law by providing that a covenant may be enforced by an assignee of the holder. Section 10(c) [§ 55-3010(3)] of this Act specifies that assignment to a new holder will be treated as a modification and Section 10 [§ 55-3010] governs modification of environmental covenants.

Subsection (b)(3) [(2)(c)] addresses the problem posed by the existing law's recognition of servitudes that served only a limited number of purposes and that law's reluctance to approve so-called "novel incidents". This restrictive view might defeat enforcement of covenants serving the environmental protection ends enumerated in this Act. Accordingly, subsection (b)(3) [(2)(c)] establishes that environmental covenants are not unenforceable solely because they do not serve purposes or fall within the categories of easements traditionally recognized at common law or other applicable law.

Subsection (b)(4) [(2)(d)] deals with a variant of the foregoing problem. Some applicable law recognizes only a limited number of "negative easements" — those preventing the owner of the burdened real property from performing acts on his real property that he would be privileged to perform absent the easement. Because a far wider range of negative burdens might be imposed by environmental covenants, subsection (b)(4) [(2)(d)] modifies existing law by eliminating the defense that an environmental covenant imposes a "novel" negative burden.

Subsection (b)(5) [(2)(e)] addresses the opposite problem — the potential unenforceability under existing law of an easement that imposes affirmative obligations upon either the owner of the burdened real property or upon the holder. Under some existing law, neither of those interests was viewed as a true easement at all. The first, in fact, was labeled a "spurious" easement because it obligated an owner of the burdened real property to perform affirmative acts. (The spurious easement was distinguished from an affirmative easement, illustrated by a

right of way, which empowered the easement's holder to perform acts on the burdened real property that the holder would not have been privileged to perform absent the easement.)

Achievement of environmental protection goals may require that affirmative obligations be imposed on the burdened real property owner or on the covenant holder or both. For example, the grantor of an environmental covenant may agree to use restrictions and may also agree to undertake affirmative monitoring or maintenance obligations. In addition, the covenant might impose specific engineering or monitoring obligations on the holder, which may be a for profit corporation, a charitable corporation or trust holder. In all these cases, the environmental covenant would impose affirmative obligations and Subsection (b)(5) [(2)(e)] makes clear that the covenant would not be unenforceable solely because it is affirmative in nature.

Subsections (b)(6) and (b)(7) [(2)(f) and (2)(g)] preclude the touch and concern and privity of estate or contract defenses, respectively. They have traditionally been asserted as defenses against the enforcement of covenants and equitable servitudes.

Subsection (b)(8) [(2)(h)] addresses the possibility that the holder may have died or for other reason fails to exist. Failure of the holder ought not invalidate the covenant and Sections 10(c) and (d) [§ 55-3010(3) and (4)] authorize replacement of a holder in various circumstances.

Subsection (b)(9) [(2)(i)] addresses the case where an owner of a contaminated parcel may agree to remedy an existing condition and may further agree to serve as holder in order to perform the necessary tasks. Under this Act, the owner may be willing to do so because Section 4 [§ 55-3004] of the Act requires that a holder be named and the owner may not be inclined to create an interest in a stranger. Under these circumstances, the owner's name would appear as both the grantor and the grantee in the land records, and this outcome ought not invalidate the covenant.

Subsection (b) [(2)] identifies the principal common law doctrines that have been applied to defeat covenants such as those created by this Act. Drafters in individual states may wish to consider whether references to other common law or statutory impediments of a similar nature ought to be added to this subsection.

Subsection (c) [(3)] addresses the treatment of instruments recorded before the date of this Act that seek to accomplish the purposes of environmental covenants under this Act. It seeks to validate such instruments, in a limited way, by specifying that the defenses covered in subsection (b) [(2)], or the fact that the instrument was identified as something other

than an environmental covenant, will not make prior covenants unenforceable. Beyond negating these specific defenses, however, this Act does not apply to those prior covenants. If the parties to a prior covenant wish to have the other benefits of this Act for that covenant, they must re-execute the covenant in a manner which satisfies the requirements of this Act.

Section (d) [(4)] is a general savings clause for other interests in real property and other agreements concerning environmental remediation which are not covered under this Act. It disavows the intent to invalidate any interest created either before or after the Act which does not comply with the Act but which otherwise may be valid under the state's law. Nor does the Act intend, in any way, to validate or invalidate an action taken by a person

to remediate contamination that is taken without formal governmental oversight or approval. A recorded instrument that does not satisfy the requirements of this Act does not come within the scope of this Act; it does not enjoy the protections of this Act and must be evaluated under other law of the state.

For example, the Act is clear that its requirements apply only to land use restrictions placed on real property pursuant to an "environmental response project" as that term is defined in the Act. If private parties choose to use conventional deed restrictions or other devices to place further activity and use restrictions on a parcel, nothing in this Act would affect that contractual arrangement either to insulate it from attack as invalid under that state's other law or to invalidate it under this law.

55-3006. Relationship to other land use law. — This chapter does not authorize a use of real property that is otherwise prohibited by zoning, by law other than this chapter regulating use of real property, or by a recorded instrument that has priority over the environmental covenant. An environmental covenant may prohibit or restrict uses of real property which are authorized by zoning or by law other than this chapter.

History.

I.C., § 55-3006, as added by 2006, ch. 15, § 1, p. 34.

COMMENT TO OFFICIAL TEXT

This section clarifies that this Act does not displace other restrictions on land use laws, including zoning laws, building codes, sanitary sewer or subdivision requirements and the like. Restrictions under those laws apply unchanged to real property covered by an environmental covenant.

Where other law, including either a state or federal environmental response project, requires structures or activities in order to perform the environmental remediation, the status of those requirements is likely to be determined by that other law and not by this Act. Thus, for example, where the environmental covenant is implementing an environmental response project under federal CERCLA law, a federal appellate court has held that the federal law authorizing the environmental response project preempts a conflicting city ordinance. *U.S. v. City and County of Denver*, 100 F.3d 1509 (10th Cir. 1996).

Clearly, the large and complex body of zoning and land use law and the law of environmental regulation supplement the provisions of this Act. In appropriate cases, a court will be called upon to articulate the interrelationship of this Act and those laws, and the Act

does not attempted to articulate all those outcomes. On the other hand, certain obvious examples may be helpful in understanding this interplay.

First, the Act contemplates that an environmental covenant might, for example, prohibit residential use on a parcel subject to a covenant. Under conventional real property principles, without references to this Act, such a prohibition or restriction in an environmental covenant will be valid even if other real property law, including local zoning, would authorize the use for residential purposes.

Alternatively, a covenant might, at the time it is recorded, permit both retail use and industrial use on a vacant parcel of contaminated real property while prohibiting residential use. Assuming all retail and industrial uses were permitted by local zoning at the time the covenant is recorded, the municipality might, before construction begins, change that zoning to bar industrial use. If such a zone change is otherwise valid under state law, nothing in this Act would affect the municipality's ability to "down zone" the parcel.

If, on the other hand, an industrial use was existing and ongoing at the time the covenant

was recorded, and an effort was then made to prohibit that use by ordinance, such state law doctrines as “vested rights” or non-conforming

uses, rather than this Act, would govern the validity of the zoning action.

55-3007. Notice. — (1) A copy of an environmental covenant shall be provided by the persons and in the manner required by the agency to:

- (a) Each person that signed the covenant;
- (b) Each person holding a recorded interest in the real property subject to the covenant;
- (c) Each person in possession of the real property subject to the covenant;
- (d) Each municipality or other unit of local government in which real property subject to the covenant is located; and
- (e) Any other person the agency requires.

(2) The validity of a covenant is not affected by failure to provide a copy of the covenant as required under this section.

History.

I.C., § 55-3007, as added by 2006, ch. 15, § 1, p. 34.

COMMENT TO OFFICIAL TEXT

This section contemplates that the agency will normally require that the final signed environmental covenant be sent to affected parties. In addition to the obvious persons who should be notified, in an appropriate case, the agency might require notice to abutting property owners. These persons are likely to have been directly involved in any major administrative proceeding, but in other cases, such as a voluntary clean-up, they may have no knowledge of the existing conditions on abutting land.

In any event, the extent and manner of giving notice rests in the discretion of the agency, and the statute imposes an affirmative duty on the persons required to provide that notice to comply.

Subsection (b) [(2)] provides that failure to provide a copy of the covenant does not invalidate the covenant. Such a failure will not prevent the covenant from protecting human health and the environment and thus need not invalidate the covenant. The remedy for such a failure would be provided by other law.

55-3008. Recording. — (1) An environmental covenant and any amendment or termination of the covenant must be recorded in every county in which any portion of the real property subject to the covenant is located. For purposes of indexing, a holder shall be treated as a grantee.

(2) Except as otherwise provided in section 55-3009(3), Idaho Code, an environmental covenant is subject to the laws of this state governing recording and priority of interests in real property.

History.

I.C., § 55-3008, as added by 2006, ch. 15, § 1, p. 34.

COMMENT TO OFFICIAL TEXT

Subsection (a) [(1)] confirms that customary indexing rules apply to the covenant. Since the owner is granting the enforcement right to a holder, all the owners' names would appear in the grantor index and the holder's name would appear in the grantee index.

In those states where a tract or another

recording system other than a grantor/grantee index is used, this section should be revised as appropriate.

The Act assumes that all parties will wish to record the environmental covenant and accordingly makes the state's recording rules apply. As between the parties, however, the

effectiveness of the covenant does not depend on whether the covenant is recorded. A signed but unrecorded covenant, under traditional real property law, binds the parties who sign it and, generally, those who have knowledge of the covenant.

The Act makes clear that, as with all recorded instruments, an environmental covenant takes priority under the normal rules of “First in time, First in Right.” See The Restatement of The Law Third Property — Mortgages §§ 7.1 and 7.3. In that sense, the covenant does not enjoy the same priority afforded real property tax liens, because of the substantial constitutional impediment such a change in priority would likely create.

However, the Act departs in important ways from the consequences of the normal

priority and other traditional rules. For example, under Section 9 [§ 55-3009], foreclosure of a tax lien cannot extinguish an environmental covenant. See Section 9(c) [§ 55-3009(3)].

Finally, in those cases where the holder’s interest is transferred to a successor holder, the assignment of that interest will be recorded, and the usual grantor/grantee indexing rules would apply. Note, however, that under Section 10(d) [§ 55-3010(4)], the assignment would be treated as an amendment of the covenant.

Recording of an environmental covenant pursuant to the law of this state provides the same constructive notice of the covenant as the recording or any other instrument provides of an interest in real property.

55-3009. Duration — Amendment by court action. — (1) An environmental covenant is perpetual unless it is:

- (a) By its terms limited to a specific duration or terminated by the occurrence of a specific event;
- (b) Terminated by consent pursuant to section 55-3010, Idaho Code;
- (c) Terminated pursuant to subsection (2) of this section;
- (d) Terminated by foreclosure of an interest that has priority over the environmental covenant; or
- (e) Terminated or modified in an eminent domain proceeding, but only if:
 - (i) The agency that signed the covenant is a party to the proceeding;
 - (ii) All persons identified in section 55-3010(1) and (2), Idaho Code, are given notice of the pendency of the proceeding; and
 - (iii) The court determines, after hearing, that the termination or modification will not adversely affect human health or the environment.

(2) If the agency that signed an environmental covenant has determined that the intended benefits of the covenant can no longer be realized, a court, under the doctrine of changed circumstances, in an action in which all persons identified in section 55-3010(1) and (2), Idaho Code, have been given notice, may terminate the covenant or reduce its burden on the real property subject to the covenant. The agency’s determination or its failure to make a determination upon request is subject to review pursuant to the Idaho administrative procedure act, chapter 52, title 67, Idaho Code.

(3) Except as otherwise provided in subsections (1) and (2) of this section, an environmental covenant may not be extinguished, limited, or impaired through issuance of a tax deed, foreclosure of a tax lien, or application of the doctrine of adverse possession, prescription, abandonment, waiver, lack of enforcement, or acquiescence, or a similar doctrine.

History.

I.C., § 55-3009, as added by 2006, ch. 15,
§ 1, p. 34.

COMMENT TO OFFICIAL TEXT

1. Subject to the other provisions in this Act, environmental covenants are intended to be perpetual, as provided in subsection (a) [(1)]. A covenant may be limited by its terms as provided in this Section, or amended or terminated under Section 10 [§ 55-3010]. Alternatively, in the limited circumstances described in this Section it may be modified in an eminent domain proceeding which meets the requirements of Subsection (a)(5) [(1)(e)]. With concurrence of the agency, an environmental covenant may also be terminated in a judicial proceeding asserting “changed circumstances” as provided in Subsection (b) [(2)].

2. Subsection (a)(5) [(1)(e)] provides special requirements to modify or terminate an environmental covenant by an exercise of eminent domain. The rationale for these special requirements is that an exercise of eminent domain may result in a change of use for real property. Such a change must ensure that it does not increase environmental risk related to the real property.

The Act does not attempt to resolve all the many complex issues likely to arise when one government agency seeks to condemn an environmental covenant imposed by another agency pursuant to an agreement with a current or former owner of the property. For example, eminent domain may result in a change of use of that property. If the changed use requires termination of the covenant’s existing activity and use limitations, and thus additional clean-up of the property, complex questions of liability and financial responsibility may arise. Alternatively, state law may already address questions of which governments have or do not have authority to condemn real property, or who are necessary or indispensable parties. State statutes are also likely to have so-called “quick take” provisions, a well-developed Administrative Procedures Act, and other important provisions for aspects of condemnation proceedings beyond the scope of this Act.

Section 9(a)(5) [§ 55-3009(1)(e)] has specific requirements for an exercise of eminent domain that modifies or terminates an environmental covenant. The applicability of this Act’s eminent domain requirements to an eminent domain action under federal law will be determined by that law.

On the other hand, if the eminent domain proceeding were to go forward without the need to terminate or amend the environmental covenant, the existing covenant would remain in place and then the approval required by this subsection of the Act would not apply.

3. Subsection (b) [(2)] imposes two specific requirements for a judicial change in an en-

vironmental covenant under the doctrine of changed circumstances. The first requires agency approval of such an application. The second requires that all parties to the covenant be given notice of the proceeding. This will allow those parties to protect their interests in the proceeding, including their interests arising from contingent future liability.

The Act intends that a court, in considering this section, would apply the doctrine of changed circumstances in its traditional sense — that is, as a proposed modification of the covenant to reduce or eliminate its burden. This section does not provide a substitute procedure for modifying a covenant to increase the burden on the real property. Such an outcome would be antithetical to the careful balancing of interests embedded in the Act. It would also be inconsistent with the expectations of owners and legally liable parties who have entered into the covenant with an expectation that the burden would not be increased except pursuant to the procedures set out in this Act.

4. Subsection (c) [(3)] provides that environmental covenants are not extinguished by later tax foreclosure sales, or by a range of potential common law and statutory impairments. As a matter of public policy, these new forms of covenants seek to protect human health and the environment and, presumably, the contamination of the real property that led to the activity and use limitations would still be present if the covenant were extinguished. Accordingly, the impairment of those limitations as a consequence of application of tax lien foreclosure or other doctrines would likely result in greater exposure to health risk. Thus termination of that protection to serve other public policies of governments seems inconsistent.

In contrast, to avoid any suggestion of impairment of contract, the Act confirms that prior mortgages and other lien holders, upon foreclosure, may extinguish a subsequent covenant that was not subordinated. The lien holder in that case, of course, would still be faced with the physical condition of the property and the agency would have whatever regulations and rights against such an owner that state and federal law afforded.

5. While this section imposes statutory constraints on the authority of the court to act in the first instance, the Act does not restrict application of other procedural and administrative law to judicial supervision of agency conduct. Thus, if a court were to determine that an agency has acted in violation of its statutory obligations in considering whether to approve a modification or termination of an environmental covenant, that conduct would

be itself be subject to judicial scrutiny under other law of that state.

Where an environmental covenant applies to real property that is otherwise subject to one of the doctrines listed in Subsection (c) [(3)], circumstances may arise in which the protections of the covenant are not needed. For example, rights gained by adverse possession would be limited by the environmental covenant's restrictions where a house had been inadvertently placed on real property subject to an environmental covenant that precluded residential use. In a case such as these, modification of the covenant can be sought pursuant to Section 10 [§ 55-3010]. Seeking such a modification will ensure that appropriate consideration will be given to residual environmental risks.

The basic policy of this Act to ensure that environmental covenants survive impairment is consistent with the broad policy articulated in the Restatement of the Law of Property (Servitudes) Third, §7.9.

Note: Idaho did not adopt the optional subsection (4) in the uniform act.

States that do not have a Marketable Record Title Act or a Dominant Mineral Interests Act will not need subsection (d). States that do have either or both of these acts may choose to put this exception in the respective statute rather than in this Act.

The exception to the Marketable Record Title Act and the Dormant Mineral Interests

Act in optional (d) is analogous to exceptions commonly made for conservation and preservation servitudes. Restatement of the Law of Property Third (Servitudes) § 7.16(5) (1998). It is based on the public importance of ensuring continued enforcement of environmental covenants to protect human health and the environment. For states adopting the registry of environmental covenants to be kept by the [insert name of state regulatory agency for environmental protection] under Section 12 of this Act, the cost of extending title searches to this registry should be low.

If there is any question whether a specific environmental covenant is exempt from the requirements of the Marketable Record Title Act or the Dominant Mineral Interests Act, the agency should comply with that Act by re-recording the covenant within the relevant act's specified statutory period. This will ensure that the covenant is not extinguished under either of these acts.

Finally, the fact that the Act specifies that notice of either an eminent domain proceeding or an action to apply the doctrine of changed circumstances be given to persons identified in Section 10 does not mean that other persons might not also be entitled to notice of the action or to intervene as parties in the action under other legal principles. Other state law may require such notice and this Act does not affect such other, additional notice requirements.

55-3010. Amendment or termination by consent. — (1) An environmental covenant may be amended or terminated by consent only if the amendment or termination is signed by:

- (a) The agency;
- (b) Unless waived by the agency, the current owner of the fee simple of the real property subject to the covenant;
- (c) Each person that originally signed the covenant, unless the person waived in a signed record the right to consent or a court finds that the person no longer exists or cannot be located or identified with the exercise of reasonable diligence; and
- (d) Except as otherwise provided in subsection (4)(b) of this section, the holder.

(2) If an interest in real property is subject to an environmental covenant, the interest is not affected by an amendment of the covenant unless the current owner of the interest consents to the amendment or has waived in a signed record the right to consent to amendments.

(3) Except for an assignment undertaken pursuant to a governmental reorganization, assignment of an environmental covenant to a new holder is an amendment.

(4) Except as otherwise provided in an environmental covenant:

- (a) A holder may not assign its interest without consent of the other parties;

- (b) A holder may be removed and replaced by agreement of the other parties specified in subsection (1) of this section; and
- (c) A court of competent jurisdiction may fill a vacancy in the position of holder.

History.

I.C., § 55-3010, as added by 2006, ch. 15,
§ 1, p. 34.

COMMENT TO OFFICIAL TEXT

1. A variety of circumstances may lead the parties to wish to amend an environmental covenant to change its activity and use limitations or to terminate the covenant.

Subsection (a) [(1)] specifies the parties that must consent to the amendment. Subsection (a)(3) [(1)(c)] reaches a party that originally signed the covenant whether or not it was an owner of the real property. Such parties might typically be ones which were liable for some or all of the environmental remediation specified in the environmental response project, including contingent liability for future remediation. This provision is intended to apply to successors in interest to the party which originally signed the covenant where the successor continues to be subject to the contingent liability under the environmental response project.

Some of the original parties to the covenant may have signed the covenant because they have contingent liability for future remediation should it become necessary. The extension of that liability to successor businesses is a complex subject controlled by the underlying state or federal environmental law creating the liability. See Blumberg, Strasser and Fowler, *The Law of Corporate Groups: Statutory Law, 2002 Annual Supplement*, § 18.02 and § 18.02.4 (Aspen, 2002) and Blumberg and Strasser, *The Law of Corporate Groups: Statutory Law-State* §§ 15.03.2 and 15.03.3 (Aspen, 1995). Where the party that originally signed the covenant has been merged into or otherwise become part of another business entity for purposes of future cleanup liability, subsection (a)(3) [(1)(c)] is intended to require the consent of that successor entity rather than the consent of the original party.

2. In considering the potential liability of successor businesses, as discussed above, it is important to understand the dual chains of successors that a particular circumstance presents — (1) successors to ownership of the business that originally caused the contamination; and (2) successors to owners of the contaminated real property. Particularly when contamination occurred many years ago, those chains of successors may be very different.

Consider this hypothetical — although very typical — situation:

Real Property Ownership. In 1925, Peter Plating, Inc. built a factory on a 3-acre lot in Hartford, CT and commenced its business, which was to apply chromium plating to coffee pots on that site. Customary business practice at the time was to discharge the exhausted chromium into “sumps” — holes dug in the ground, and filled with large stones. Peter Plating did this for 25 years.

In 1950, Peter Plating closed its Hartford plating operation, and sold the land and factory to Rabbit Warehouses, Inc. Rabbit used the factory for 25 years as a storage facility, and then sold the factory in 1975 to Ernie Entrepreneur, an individual, who bought the land with the proceeds of a first mortgage from First Local Bank.

Ernie used the factory for light manufacturing until 1985. He also leased part of the site to Acme Auto Repair, Inc. Acme dumped used oil and degreasers into its own sump on the lot. At some unknown date, Acme ceased operations.

In 1985, after Ernie learned of the contamination, he transferred ownership of the land to a corporation — Ernie, Inc. Ernie and his wife owned all the stock of the new corporation. In 1986, Ernie ceased operations, abandoned the factory, and moved with his family to an island off North Carolina. Ernie, Inc. was later administratively dissolved under state law for failure to file its annual reports.

First Local Bank started foreclosure in 1986, learned of the contamination, and withdrew the foreclosure action because of its reluctance to be in the chain of title. The Bank still holds the mortgage, but long ago wrote off the debt on its books.

Real property taxes have not been paid since 1984. City officials started to foreclose for unpaid taxes, but when they learned of the contamination, they, like First Local Bank, decided not to foreclose.

In 2002, the City demolished the factory as a safety measure, put a fence around it and put a \$200,000 demolition lien on the property. Today, the site is abandoned, and neighborhood children play games on the lot after crawling under the fence. Clean-up costs are

estimated at \$1.6 million; a “clean” 1.5-acre lot in this run-down neighborhood recently sold for \$50,000.

The traditional “chain of title” doctrine in real property suggests that successive owners and operators of the real property, beginning with the original owner or tenant that caused contamination of the real property, may all have potential liability. In chronological order, they include: (1) Peter Plating, Inc.; (2) Rabbit Warehousing, Inc. (3) Ernie Entrepreneur, individually; (4) Acme Auto Repair, Inc.; and (5) Ernie, Inc.

Stock and Asset Ownership. Aside from the successor real property ownership, we must also consider the successor ownership of the business that caused the contamination. Assume that 100% of Peter Plating’s stock was acquired by a publicly-held corporation, Jefferson, Inc., in 1950. The parent corporation moved the plating business to a southern state, which is why the Hartford business closed. In 1970, Jefferson sold off the plating assets, but no stock, to Hiccup, NA, a publicly traded British corporation. Both Jefferson and Hiccup are still in business.

This chain of stock and asset sales should result in at least one and perhaps two additional “successors” whose role in the transaction may require further analysis.

Assume this Act had been in effect in 1940, and Peter Plating, Inc. had signed the original environmental covenant. If the agency wishes in 2003 to amend the 1940 covenant, it will be important to determine who must sign on behalf of Peter Plating — the person who originally signed the covenant in 1940 — as required by subsection 10(a)(3) [(1)(c)].

3. Note also that Ernie, Inc. — the current owner — has abandoned the property and moved out of state. Neither this corporation nor Ernie Entrepreneur, as an individual, is likely to cooperate in signing a new covenant today or an amendment to an original covenant that was signed in 1940. This may pose practical difficulties in satisfying the requirements of Section 10(a)(2) [§ 55-3010(1)(b)].

4. In order to secure the consents required by this section, it is likely that the agency will require the party seeking the amendment to provide notice to the parties whose consent is required by the statute.

5. Note that this section does not require the consent of intermediate owners of the real property — in our example, if the original owner in 1940 was Peter Plating, and the current owner is Ernie, Inc., then Rabbit Warehouses, Inc., would not be required to approve an amendment to the covenant. Rabbit would have been bound by the covenant when it bought the parcel in 1975. Since there is no allegation that Rabbit took any action in violation of the covenant, and Rabbit conveyed the property to Ernie without retention

of any interest in the property, Rabbit would not be affected by the covenant and therefore need not sign the amendment.

6. Finally, the covenant may be amended or terminated with respect only to a portion of the real property that was originally subject to the covenant. Thus, for example, if a covenant originally covered 100 acres of real property and as a result of remediation activity, 50 acres of the site eventually became completely free of contamination and pose no further environmental risk, the parties might agree to terminate the activity and use limitations on the cleaned up 50 acres while leaving the covenant in place on the remaining land.

7. As provided in Section 11(b) [§ 55-3011(2)], this Act does not limit the agency’s regulatory authority under other law to regulate an environmental response project and the agency may be well advised to consider the implication of this provision in drafting a specific environmental covenant. Thus, for example, if new science suggested a need for additional monitoring or remediation at a contaminated site beyond that mandated in a recorded environmental covenant applicable to that site, the agency’s authority to require that additional work would depend on other law, while its authority to impose the remediation cost on other parties may depend both on that law and on the terms of any prior agreements the agency may have executed with potentially liable parties.

Under this Act, however, the agency would be prevented from administratively releasing or amending real property covenants without approval of the parties designated in this section. Given the potential legal liability of the parties in the two chains of title who may be affected by an amendment to or termination of the covenant, this is an appropriate outcome.

However, over time, it may not be practical to identify the original parties or their corporate successors in order to secure their consent. Section 10(a)(3) [§ 55-3010(1)(c)] provides a judicial mechanism by which the need for absent parties’ consent may be avoided.

The same section highlights the possibility that the agency might seek the agreement of the original parties to future amendments of the covenant, without the need for later consent. Such a waiver might be attractive to original parties, depending on the extent to which the agency was willing to hold original parties harmless from the liability that might otherwise accrue from a claimed injury following a use once prohibited by the original covenant, and depending also on the overall cost of the transaction.

Where there is a change in either the current knowledge of remaining contamination or the current understanding of the environmental risks it presents, the agency may

conclude that the environmental response project should be changed or new regulatory action taken. The agency's ability to take such action is contemplated by § 11(b) [§ 55-3011(2)] but, in the absence of consent, is not governed by this Act.

The agency may wish to consider whether the following parties have a sufficient interest in a particular proposal to make notice of the proposed amendment to them advisable:

- (1) All affected local governments;
- (2) The state regulatory agency for environmental protection if it is not the agency for this environmental response project;
- (3) All persons holding an interest of record in the real property;
- (4) All persons known to have an unrecorded interest in the real property;
- (5) All affected persons in possession of the real property;

(6) All owners of the fee or any other interests in abutting real property and any other property likely to be affected by the proposed modification;

(7) All persons specifically designated to have enforcement powers in the covenant; and

(8) The public.

The agency may also wish to consider whether the notice should include any of the following:

(1) New information showing that the risks posed by the residual contamination are less or greater than originally thought;

(2) Information demonstrating that the amount of residual contamination has diminished; and

(3) Information demonstrating that one or more activity limitations or use restrictions is no longer necessary.

55-3011. Enforcement of environmental covenant. — (1) A civil action for injunctive or other equitable relief for violation of an environmental covenant may be maintained by:

- (a) A party to the covenant;
- (b) The agency or, if it is not the agency, the Idaho department of environmental quality;
- (c) Any person to whom the covenant expressly grants power to enforce;
- (d) A person whose interest in the real property or whose collateral or liability may be affected by the alleged violation of the covenant; or
- (e) A municipality or other unit of local government in which the real property subject to the covenant is located.

(2) This chapter does not limit the regulatory authority of the agency or the Idaho department of environmental quality under law other than this chapter with respect to an environmental response project.

(3) A person is not responsible for or subject to liability for environmental remediation solely because it has the right to enforce an environmental covenant.

History.

I.C., § 55-3011, as added by 2006, ch. 15, § 1, p. 34.

STATUTORY NOTES

Cross References.

Department of environmental quality,
§ 39-104.

COMMENT TO OFFICIAL TEXT

1. Subsection (a) [(1)] specifies which persons may bring an action to enforce an environmental covenant.

2. Importantly, the Act seeks to distinguish between the expanded rights granted to en-

force the covenant in accordance with its terms, and actions for money damages, restitution, tort claims and the like.

This Act confers standing to enforce an environmental covenant on persons other

than the agency and other parties to the covenant because of the important policies underlying compliance with the terms of the covenant. Thus, for example, in the case of a covenant approved by a federal agency on real property which has been conveyed out of federal ownership, the Act confers standing on a state agency to enforce the covenant, even though the agency may not have signed it. Further, a local affected government is empowered to seek injunctive relief to enforce a covenant to which it may not be a party. In both cases, absent this Act, those state and municipal agencies might not have standing to enforce a covenant, and might simply be relegated to seeking standing under other law.

Similarly, the mandated 'holder' has a statutory right to enforce the covenant under this section, since the holder must be a party to the covenant. Over time, the holder may come to play a significant role in the monitoring and enforcement process.

On the other hand, the Act does not provide any authority for a citizens' suit to enforce a covenant, although other law may authorize such suits. This Act does not affect that other law.

3. The Act does not authorize any claims for damages, restitution, court costs, attorneys' fees or other such awards. Standing to bring such claims, and the bases for any such cause of action, must be found, if at all, under other law. At the same time, while this action does not authorize any such cause of action, it does not bar them if available under other law.

4. Subsection (b) [(2)] recognizes that in many situations the statutes authorizing an environmental response project will provide substantial authority for governmental enforcement of an environmental covenant in addition to rights specified in the environmental covenant.

55-3012. Registry — Substitute notice. — (1) The Idaho department of environmental quality shall establish and maintain a registry that contains all environmental covenants and any amendment or termination of those covenants. The registry may also contain any other information concerning environmental covenants and the real property subject to them which the department of environmental quality considers appropriate. The registry is a public record.

(2) After an environmental covenant or an amendment or termination of a covenant is filed in the registry established and maintained pursuant to subsection (1) of this section, a notice of the covenant, amendment, or termination that complies with this section may be recorded in the land records in lieu of recording the entire covenant. Any such notice must contain:

- (a) A legally sufficient description and any available street address of the real property subject to the covenant;
- (b) The name and address of the owner of the fee simple interest in the real property, the agency, and the holder if other than the agency;
- (c) A statement that the covenant, amendment, or termination is available in a registry at the department of environmental quality, which discloses the method of any electronic access; and
- (d) A statement that the notice is notification of an environmental covenant executed pursuant to this chapter.

(3) A statement in substantially the following form, executed with the same formalities as a deed in this state, satisfies the requirements of subsection (2) of this section:

"1. This notice is filed in the land records of the (political subdivision) of (insert name of jurisdiction in which the real property is located) pursuant to section 55-3012, Idaho Code.

2. This notice and the covenant, amendment or termination to which it refers may impose significant obligations with respect to the property described below.

3. A legal description of the property is attached as Exhibit A to this notice. The address of the property that is subject to the environmental covenant is (insert address of property) (not available).
4. The name and address of the owner of the fee simple interest in the real property on the date of this notice is (insert name of current owner of the property and the owner's current address as shown on the tax records of the jurisdiction in which the property is located).
5. The environmental covenant, amendment or termination was signed by (insert name and address of the agency).
6. The environmental covenant, amendment or termination was filed in the registry on (insert date of filing).
7. The full text of the covenant, amendment or termination and any other information required by the agency is on file and available for inspection and copying in the registry maintained for that purpose by the Idaho department of environmental quality."

History.

I.C., § 55-3012, as added by 2006, ch. 15,
§ 1, p. 34.

STATUTORY NOTES

Cross References.

Department of environmental quality,
§ 39-104.

Compiler's Notes.

The words enclosed in parentheses so appeared in the law as enacted.

COMMENT TO OFFICIAL TEXT

1. This section should be used only by states that require creation of a registry of environmental covenants pursuant to this optional Section. At the time this Act was promulgated, Section 101 of CERCLA had recently been amended to encourage states to create registries of sites where remediation work had been completed; see Small Business Liability Relief and Brownfields Revitalization Act, Pub. L. No. 107-118 § 128(b)(1)(C) (2002). The Act anticipates that in those states that choose to create such a registry for federal law purposes, this section would prove useful in integrating local land recording systems with a single, state-wide registry.

2. The notice specified in this Section may be recorded in the land records in lieu of recording the environmental covenant. However, such a notice should be authorized only if the registry is established and the environmental covenant is recorded there. Where there is no separate registry, the environmental covenant must be recorded in the land records and this notice would not be used.

3. A description of the property under subsection (b)(1) [(2)(a)] may include identification by latitude/longitude coordinates. Note also that a description of the location of the contamination itself on the site may require considerably more detail than the description of the real property subject to the covenant; see the discussion of this subject in the comments to Section 4 [§ 55-3004].

4. The web address required to be contained in the notice by subsection (c)(7) [requirement not adopted by Idaho] should reflect the most direct means of identifying the full covenant and accompanying information. As appropriate, the address may require a specific internet address, page or name reference, document number of other unique identifying name, number or symbol.

A registry created under this optional section could be self-funding, in the same way that the corporate records departments of most Secretaries of State offices and the land recording offices of most counties and municipalities are self-funding.

55-3013. Uniformity of application and construction. — In applying and construing this uniform act, consideration must be given to the need

to promote uniformity of the law with respect to its subject matter among states that enact it.

History.

I.C., § 55-3013, as added by 2006, ch. 15,
§ 1, p. 34.

55-3014. Relation to electronic signatures in global and national commerce act. — This chapter modifies, limits, or supersedes the federal electronic signatures in global and national commerce act (15 U.S.C. section 7001 et seq.) but does not modify, limit, or supersede section 101 of that act (15 U.S.C. section 7001(a)) or authorize electronic delivery of any of the notices described in section 103 of that act (15 U.S.C. section 7003(b)).

History.

I.C., § 55-3014, as added by 2006, ch. 15,
§ 1, p. 34.

STATUTORY NOTES

Compiler's Notes.

The references enclosed in parentheses so
appeared in the law as enacted.

55-3015. Severability. — The provisions of this chapter are hereby declared to be severable and if any provision of this chapter or the application of such provision to any person or circumstance is declared invalid for any reason, such declaration shall not affect the validity of the remaining portions of this chapter.

History.

I.C., § 55-3015, as added by 2006, ch. 15,
§ 1, p. 34.

CHAPTER 31

PROHIBITION OF TRANSFER FEE COVENANTS

SECTION.

55-3101. Legislative findings.
55-3102. Definitions.

SECTION.

55-3103. Real estate transfer fees unlawful.

55-3101. Legislative findings. — (1) The public policy of this state favors the transferability of interests in real property free from unreasonable restraints on alienation and covenants or servitudes that do not touch and concern the property.

(2) A transfer fee covenant violates the public policy of this state by impairing the marketability of title to the affected real property and constitutes an unreasonable restraint on alienation, regardless of the duration of the covenant or the amount of the transfer fee set forth in the covenant.

History.

I.C., § 55-3101, as added by 2011, ch. 107,
§ 1, p. 273.

STATUTORY NOTES**Effective Dates.**

Section 2 of S.L. 2011, ch. 107 declared an emergency. Approved March 22, 2011.

55-3102. Definitions. — As used in this section:

(1) “Association” means a nonprofit, mandatory membership organization comprised of owners of homes, condominiums, cooperatives, manufactured homes or any interest in real property, created pursuant to a declaration, covenant or other applicable law.

(2) “Transfer” means the sale, gift, grant, conveyance, assignment, inheritance or other transfer of an interest in real property located in this state.

(3) “Transfer fee” means a fee or charge payable upon the transfer of an interest in real property or payable for the right to make or accept such transfer, regardless of whether the fee or charge is a fixed amount or is determined as a percentage of the value of the property, the purchase price or other consideration given, but shall not include any tax, assessment, fee or charge imposed by a governmental authority or taxing district pursuant to applicable laws, ordinances or regulations or any obligation imposed by a court order, judgment or decree.

(4) “Transfer fee covenant” means a provision in a document, whether recorded or not and however denominated, which purports to run with the land or bind current owners or successors in title to specified real property located in this state, and which obligates a transferee or transferor of all or part of the property to pay a fee or charge to a third person upon transfer of an interest in all or part of the property, or in consideration for permitting any such transfer. The term “transfer fee covenant” shall not include:

(a) Any provision of a purchase contract, option, mortgage, security agreement, real property listing agreement, lease or other agreement which obligates one (1) party to the agreement to pay the other, as full or partial consideration for the agreement or for a waiver of rights under the agreement, an amount determined by the agreement, if that amount is: (i) payable on a one-time basis only upon the next transfer of an interest in the specified real property and, once paid, shall not bind successors in title to the property; and (ii) constitutes a loan assumption or similar fee charged by a lender holding a lien on the property; or

(b) Any provision in a deed, memorandum or other document recorded for the purpose of providing record notice of an agreement described in paragraph (a) of this subsection; or

(c) Any provision in a mortgage, deed of trust or promissory note secured by a mortgage or deed of trust; or

(d) Any commission payable to a licensed real estate broker for the transfer of real property pursuant to an agreement between the broker and the transferor or transferee; or

(e) Any fee charged that is a typical or common real estate closing cost,

including closing or escrow fees, settlement fees, attorney's fees or title insurance premiums and fees; or

(f) Any provision of a document requiring payment of a fee or charge to an association or any entity that operates for the benefit of the association, its members or property of the association or its members to be used exclusively for purposes authorized in the document, so long as no portion of the fee is required to be passed through to a third-party designated or identifiable by description in the document or another document referenced therein; or

(g) Any provision of a document requiring payment of any fee or charge under the housing or financing programs of the Idaho housing and finance association; or

(h) Any provision in any purchase contract, option, mortgage, security agreement, real property listing agreement or lease that obligates one (1) party to the agreement to pay the other consideration for assignment or transfer of the agreement.

History.

I.C., § 55-3102, as added by 2011, ch. 107,
§ 1, p. 273.

STATUTORY NOTES

Compiler's Notes.

For more on the Idaho housing and finance association, see <http://www.ihfa.org>.

Effective Dates.

Section 2 of S.L. 2011, ch. 107 declared an emergency. Approved March 22, 2011.

55-3103. Real estate transfer fees unlawful. — (1) A transfer fee covenant recorded after the effective date of this section, or any lien to the extent that it purports to secure the payment of a transfer fee, is not binding upon or enforceable against the affected real property or any subsequent owner, purchaser or mortgagee of any interest in the property.

(2) Nothing in this section shall imply that a transfer fee covenant recorded prior to the effective date of this section is valid or enforceable.

(3) A person who records a transfer fee covenant, files a lien that purports to secure payment of a transfer fee or enters into an agreement imposing a private transfer fee obligation shall be liable for:

(a) Any and all damages resulting from the imposition of the transfer fee obligation on the transfer of an interest in the real property, including the amount of any transfer fee paid by a party to the transfer.

(b) All attorney's fees, expenses and costs incurred by a party to the transfer or mortgagee of the real property to recover the transfer fee paid or in connection with an action to quiet title.

History.

I.C., § 55-3103, as added by 2011, ch. 107,
§ 1, p. 273.

STATUTORY NOTES**Compiler's Notes.**

The phrase "the effective date of this section" in subsections (1) and (2) refers to the effective date of S.L. 2011, ch. 107, § 1, which was effective March 22, 2011.

Effective Dates.

Section 2 of S.L. 2011, ch. 107 declared an emergency. Approved March 22, 2011.

TITLE 56

PUBLIC ASSISTANCE AND WELFARE

CHAPTER.

1. PAYMENT FOR SKILLED AND INTERMEDIATE SERVICES, §§ 56-101 — 56-136.
2. PUBLIC ASSISTANCE LAW, §§ 56-201 — 56-266.
3. COUNTY COUNCILS OF PUBLIC ASSISTANCE, §§ 56-301 — 56-303.
4. COOPERATIVE WELFARE FUND, §§ 56-401 — 56-460.
5. FOOD STAMP REVOLVING FUND, §§ 56-501 — 56-504.
6. YOUTH CONSERVATION, §§ 56-601 — 56-609.
7. RIGHTS OF THE BLIND AND PERSONS WITH PHYSICAL DISABILITIES, §§ 56-701 — 56-707.
8. HARD-TO-PLACE CHILDREN, §§ 56-801 — 56-806.

CHAPTER.

9. TELECOMMUNICATIONS SERVICE ASSISTANCE, §§ 56-901 — 56-905.
10. DEPARTMENT OF HEALTH AND WELFARE, §§ 56-1001 — 56-1054.
11. IDAHO FAMILY ASSET BUILDING INITIATIVE, §§ 56-1101 — 56-1108.
12. IDAHO STATE INDEPENDENT LIVING COUNCIL, §§ 56-1201 — 56-1206.
13. LONG-TERM CARE PARTNERSHIP PROGRAM, §§ 56-1301 — 56-1306.
14. IDAHO HOSPITAL ASSESSMENT ACT, §§ 56-1401 — 56-1410.
15. IDAHO SKILLED NURSING FACILITY ASSESSMENT ACT, §§ 56-1501 — 56-1511.
16. IDAHO INTERMEDIATE CARE FACILITY ASSESSMENT ACT, §§ 56-1601 — 56-1610.

CHAPTER 1

PAYMENT FOR SKILLED AND INTERMEDIATE SERVICES

SECTION.

56-101. Definitions.

PART A. GENERAL PROVISIONS

- 56-102. Principles of prospective rates and payment. [Repealed.]
- 56-103. Prospective base rates by class of facilities. [Repealed.]
- 56-104. Recapture of depreciation.
- 56-105 — 56-107. [Repealed.]
- 56-108. Property reimbursement — Facilities will be paid a property rental rate, property taxes and reasonable property insurance.
- 56-109. Property rental rate implementation schedule. [Repealed.]

PART B. FREE-STANDING SKILLED CARE AND INTERMEDIATE CARE FACILITIES

- 56-110 — 56-112. [Repealed.]
- 56-113. Intermediate care facilities for people with intellectual disabilities. [Repealed.]
- 56-114. Freestanding special care facilities.
- 56-115. Capitalization of assets. [Repealed.]
- 56-116. [Reserved.]
- 56-117. Payment of special rates.
- 56-118. Reimbursement rates.

SECTION.

56-119. [Reserved.]

PART C. HOSPITAL-BASED FACILITIES

- 56-120. Property reimbursement for hospital-based skilled nursing facilities.
- 56-121. New hospital-based facilities. [Repealed.]
- 56-122 — 56-129. [Reserved.]

PART D. MISCELLANEOUS

- 56-130. Development of payment, adjustment, audit and settlement mechanisms. [Repealed.]
- 56-131. Multiple-use plans.
- 56-132. Disputes.
- 56-133. Administrative review process.
- 56-134. Denial, suspension, revocation of license or provisional license — Penalty.
- 56-134A. Remedies for deficient care.
- 56-135. Adoption of rules.

PART E. PHYSICIANS AND DENTISTS

- 56-136. Physician and dentist reimbursement. [Repealed.]

56-101. Definitions. — Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter and shall have the following meanings:

(1) “Appraisal” means the method of determining the value of the property as determined by an appraisal conducted by a member of the appraisal institute (MAI), or successor organization. The appraisal must specifically identify the values of land, building, equipment, and goodwill.

(2) “Assets” means economic resources of the contractor, recognized and measured in conformity with generally accepted accounting principles.

(3) “Bed-weighted median” is determined by arraying the average per diem cost per bed of all facilities from high to low and identifying the bed at the point in the array at which half of the beds have equal or higher per diem costs and half have equal or lower per diem costs. The identified bed is the median bed. The per diem cost of the median bed is the bed-weighted median.

(4) “Case mix index” is a numeric score assigned to each facility resident, based on the resident’s physical and mental condition, which projects the amount of relative resources needed to provide care to the resident.

(5) “Depreciation” means the systematic distribution of the cost or other basis of tangible assets, less salvage, over the estimated useful life of the assets.

(6) “Direct care costs” consists of the following costs directly assigned to the nursing facility or allocated to the nursing facility through medicare cost finding principles:

(a) Direct nursing salaries which include the salaries of registered nurses, licensed professional nurses, certificated nurse’s aides, and unit clerks; and

(b) Routine nursing supplies; and

(c) Nursing administration; and

(d) Direct portion of medicaid related ancillary services; and

(e) Social services; and

(f) Raw food; and

(g) Employee benefits associated with the direct salaries.

(7) “Director” means the director of the department of health and welfare or the director’s designee.

(8) “Equity” means the net book value of all tangible and intangible assets less the recorded value of all liabilities, as recognized and measured in conformity with generally accepted accounting principles.

(9) “Facility” means an entity which contracts with the director to provide services to recipients in a structure owned, controlled, or otherwise operated by such entity, and which entity is responsible for operational decisions. In conjunction with the use of the term “facility”:

(a) “Freestanding intermediate care” means an intermediate care facility, as defined in and licensed under chapter 13, title 39, Idaho Code, which is not owned, managed, or operated by, nor is otherwise a part of a hospital, as defined in section 39-1301(a), Idaho Code; and

(b) “Freestanding skilled care” means a nursing facility, as defined in and licensed under chapter 13, title 39, Idaho Code, which is not owned,

managed, or operated by, nor is otherwise a part of a hospital, as defined in section 39-1301(a), Idaho Code; and

(c) "Freestanding special care" means a facility that provides either intermediate care, or skilled care, or intermediate care for people with intellectual disabilities, or any combination of either, which is not owned, managed, or operated by, nor is otherwise a part of a hospital, as defined in section 39-1301(a), Idaho Code; and

(d) "Hospital-based" means a nursing or intermediate care facility, as defined in and licensed under chapter 13, title 39, Idaho Code, which is owned, managed, or operated by, or is otherwise a part of a hospital, as defined in section 39-1301(a), Idaho Code.

(10) "Forced sale" is a sale required by a bankruptcy, foreclosure, the provisions of a will or estate settlement pursuant to the death of an owner, physical or mental incapacity of an owner which requires ownership transfer to existing partner or partners, or a sale required by the ruling of a federal agency or by a court order.

(11) "Goodwill" means the amount paid by the purchaser that exceeds the net tangible assets received. The value of goodwill is derived from the economic benefits that a going concern may enjoy, as compared with a new one, from established relations in the related markets, with government departments and other noncommercial bodies and with personal relationships. These intangible assets cannot be separated from the business and sold as can plant and equipment. Under the theory that the excess payment would be made only if expected future earnings justified it, goodwill is often described as the price paid for excess future earnings. The amortization of goodwill is nonallowable, nonreimbursable expense.

(12) "Historical cost" means the actual cost incurred in acquiring and preparing an asset for use, including feasibility studies, architect's fees, and engineering studies.

(13) "Indirect care costs" consists of the following costs either directly coded to the nursing facility or allocated to the nursing facility through the medicare step-down process:

- (a) Administrative and general care cost; and
- (b) Activities; and
- (c) Central services and supplies; and
- (d) Laundry and linen; and
- (e) Dietary ("non-raw food" costs); and
- (f) Plant operation and maintenance (excluding utilities); and
- (g) Medical records; and
- (h) Employee benefits associated with the indirect salaries; and
- (i) Housekeeping; and
- (j) Other costs not included in direct care costs or costs exempt from cost limits.

(14) "Interest rate limitation" means that the interest rate allowed for working capital loans and for loans for major movable equipment for intermediate care facilities for people with intellectual disabilities shall be the prime rate as published in the western edition of the Wall Street Journal or successor publication, plus one percent (1%) at the date the loan is made.

All interest expense greater than the amount derived by using the limitation above shall be nonreimbursable; provided, however, that this interest rate limitation shall not be imposed against loans or leases which were made prior to July 1, 1984. Said loans or leases shall be subject to the tests of reasonableness, relationship to patient care and necessity.

(15) "Intermediate care facility for people with intellectual disabilities" means an habilitative facility designed and operated to meet the educational, training, habilitative and intermittent medical needs of the developmentally disabled.

(16) "Major movable equipment" means such items as accounting machines, beds, wheelchairs, desks, furniture, vehicles, etc. The general characteristics of this equipment are:

- (a) A relatively fixed location in the building;
- (b) Capable of being moved, as distinguished from building equipment;
- (c) A unit cost sufficient to justify ledger control;
- (d) Sufficient size and identity to make control feasible by means of identification tags; and
- (e) A minimum life of approximately three (3) years.

(17) "Medicaid" means the 1965 amendments to the social security act (P.L. 89-97), as amended.

(18) "Minor movable equipment" includes such items as wastebaskets, bedpans, syringes, catheters, silverware, mops, buckets, etc. The general characteristics of this equipment are:

- (a) In general, no fixed location and subject to use by various departments of the provider's facility;
- (b) Comparatively small in size and unit cost;
- (c) Subject to inventory control;
- (d) Fairly large quantity in use; and
- (e) Generally, a useful life of approximately three (3) years or less.

(19) "Net book value" means the historical cost of an asset, less accumulated depreciation.

(20) "Normalized per diem costs" refers to direct care costs that have been adjusted based on the facility's case mix index for purposes of making the per diem costs comparable among facilities. Normalized per diem costs are calculated by dividing the facility's direct care per diem costs by its facility-wide case mix index, and multiplying the result by the statewide average case mix index.

(21) "Nursing facility inflation rate" means the most specific skilled nursing facility inflation rate applicable to Idaho established by data resources, inc., or its successor. If a state or regional index has not been implemented, the national index shall be used.

(22) "Patient-day" means a calendar day of care which will include the day of admission and exclude the day of discharge unless discharge occurs after 3:00 p.m. or it is the date of death, except that, when admission and discharge occur on the same day, one (1) day of care shall be deemed to exist.

(23) "Property costs" means the total of allowable interest expense, plus depreciation, property insurance, real estate taxes, amortization, and allowable lease/rental expense. The department may require and utilize an

appraisal to establish those components of property costs which are identified as an integral part of an appraisal.

(24) "Raw food" means food used to meet the nutritional needs of the residents of a facility, including liquid dietary supplements, liquid thickeners, and tube feeding solutions.

(25) "Reasonable property insurance" means that the consideration given is an amount that would ordinarily be paid by a cost-conscious buyer for comparable insurance in an arm's length transaction. Property insurance per licensed bed in excess of two (2) standard deviations above the mean of the most recently reported property insurance costs per licensed bed of all facilities in the reimbursement class as of the end of a facility's fiscal year shall not be considered reasonable.

(26) "Recipient" means an individual determined eligible by the director for the services provided in the state plan for Medicaid.

(27) "Rural hospital-based nursing facilities" are those hospital-based nursing facilities not located within a metropolitan statistical area (MSA) as defined by the United States bureau of the census.

(28) "Urban hospital-based nursing facilities" are those hospital-based nursing facilities located within a metropolitan statistical area (MSA) as defined by the United States bureau of the census.

(29) "Utilities" means all expenses for heat, electricity, water and sewer.

History.

I.C., § 56-101, as added by 1981, ch. 159, § 1, p. 271; am. 1984, ch. 118, § 1, p. 264; am. 1985, ch. 128, § 1, p. 312; am. 1986, ch. 87,

§ 1, p. 250; am. 1988, ch. 155, § 1, p. 279; am. 1999, ch. 82, § 1, p. 265; am. 2000, ch. 274, § 146, p. 374; am. 2010, ch. 235, § 41, p. 542.

STATUTORY NOTES

Cross References.

Director of department of health and welfare, §§ 56-1002, 56-1003.

Prior Laws.

Former §§ 56-101 to 56-104, which comprised 1941, ch. 181, §§ 1-a, 1-b, 1-c, 1-d as added by 1947, ch. 237, § 2, p. 583; am. 1951, ch. 214, § 1, p. 442; 1972, ch. 196, §§ 6, 7, p. 483, were repealed by S.L. 1974, ch. 23, § 1, p. 633.

Amendments.

The 2010 amendment, by ch. 235, in subsection (8), substituted "net book value" for "new book value"; and in paragraph (9)(c) and subsections (14) and (15), substituted "people with intellectual disabilities" for "the mentally retarded."

Federal References.

The social security act, P.L. 89-97, referred to in subdivision (17), is compiled as 26 U.S.C.S. §§ 72, 79, 213, 401, 405, 1401, 3101, 3111, 3201, 3221, 6051; 42 U.S.C. §§ 303, 401, 401a, 402, 418, 426, 603, 907, 1203, 1301, 1306, 1309, 1315, 1353, 1383, 1395 to 1396d; 45 U.S.C. §§ 228e, 228s to 228z.

Compiler's Notes.

For more on appraisers with an MAI designation, see http://www.appraisalinstitute.org/designations/MAI_Designations.aspx.

Data resources, inc., referred to in subsection (21) was merged with Wharton econometric forecasting associates in 2001 to form IHS global insight. See <http://www.ihs.com/products/global-insight/index.aspx?pu=1&rd=globalinsight.com>.

The standards for delineating metropolitan statistical areas (MSA), referred to in subsection (27), are set and controlled by the office of management and budget. See http://www.whitehouse.gov/omb/inforeg_statpolicy/#ms.

The words enclosed in parentheses so appeared in the law as enacted.

Effective Dates.

Section 3 of S.L. 1981, ch. 159 read: "(1) An emergency existing therefor, which emergency is hereby declared to exist, subsection (c) of Section 56-104, Idaho Code, as enacted by Section 1 of this act shall be in full force and effect on and after its passage and approval.

"(2) Sections 56-101, 56-105, 56-106, 56-107, 56-130 and all other subsections or sec-

tions necessary to enable the director of the department of health and welfare to promulgate rules and regulations prior to January 1, 1982, to be effective January 1, 1982, shall be in full force and effect on and after July 1, 1981.

“(3) Section 2 of this act and all other codified sections of this act shall be in full force and effect on and after January 1, 1982.”

JUDICIAL DECISIONS

Cited in: Idaho County Nursing Home v. Idaho Dep't of Health & Welfare, 120 Idaho 933, 821 P.2d 988 (1991).

PART A. GENERAL PROVISIONS

56-102. Principles of prospective rates and payment. [Repealed.]

Repealed by S.L. 2011, ch. 164, § 2, effective July 1, 2011.

History.

I.C., § 56-102, as added by 1981, ch. 159, § 1, p. 271; am. 1999, ch. 82, § 2, p. 265; am.

2001, ch. 68, § 1, p. 126; am. 2009, ch. 34, § 1, p. 95; am. 2010, ch. 296, § 2, p. 801.

STATUTORY NOTES

Prior Laws.

Former § 56-102 was repealed. See Prior Laws, § 56-101.

56-103. Prospective base rates by class of facilities. [Repealed.]

STATUTORY NOTES

Prior Laws.

Former § 56-103 was repealed. See Prior Laws, § 56-101.

103, as added by 1981, ch. 159, § 1, p. 271, was repealed by S.L. 1999, ch. 82, § 9, p. 265, effective July 1, 1999.

Compiler's Notes.

This section, which comprised I.C., § 56-

56-104. Recapture of depreciation. — (a) Where depreciable assets that were reimbursed based on cost and were used in the medicaid program subsequent to January 1, 1982, and for which depreciation has been reimbursed by the director, are sold for an amount in excess of their net book value, depreciation so reimbursed shall be recaptured from the buyer of the facility in an amount equal to reimbursed depreciation or gain on the sale, whichever is less. Depreciation shall be recaptured in full if a sale of a depreciated facility takes place within the first five (5) years of seller's ownership after January 1, 1982.

(b) Depreciation shall be recaptured by the director from the buyer of the facility over a period of time not to exceed five (5) years from the date of sale, with not less than one-fifth (1/5) of the total amount being recaptured for each year after such date.

(c) Leases of facilities entered into on or after the effective date of this subsection shall be reimbursed in the same manner as an owned asset, with

recapture of depreciation being effected against the buyer of the facility in the case where the facility's assets are sold by the lessor of the facility. Leases in existence prior to the effective date of this subsection shall be reimbursed at the rate established prior to such date for each such lease. Renegotiated leases shall be reimbursed at established rates, plus a reasonable annual increase.

History.

I.C., § 56-104, as added by 1981, ch. 159, § 1, p. 271; am. 1985, ch. 128, § 2, p. 312; am. 1986, ch. 87, § 2, p. 250.

STATUTORY NOTES

Prior Laws.

Former § 56-104 was repealed. See Prior Laws, § 56-101.

Compiler's Notes.

The phrase "the effective date of this subsection" in subsection (c) refers to the date of the enactment of subsection (c) of this section by S.L. 1982, ch. 159, § 1, which was effective March 30, 1981.

Effective Dates.

Subsection (1) of section 3 of S.L. 1981, ch. 159 provided that subsection (c) of this section should be in full force and effect on March 30, 1981; subsection (3) provided that subsections (a) and (b) should be in full force and effect January 1, 1982.

JUDICIAL DECISIONS

ANALYSIS

Application.

Constitutionality.

Application.

This section did not violate the procedural due process rights of the purchaser of the health care facility where this section was enacted before the purchase was consummated; the state was not required to give a hearing as to the effects of this section's application prior to the time of the purchase of the health care facility. *Sandpoint Convalescent Servs., Inc. v. Idaho Dep't of Health & Welfare*, 114 Idaho 281, 756 P.2d 398 (1988).

Constitutionality.

Because there is a conceivable basis for recapturing depreciation from the buyer of a nursing home for depreciation previously paid to the seller as a cost of providing medical care, this section cannot be categorized as arbitrary, and it does not violate substantive due process. *Sandpoint Convalescent Servs., Inc. v. Idaho Dep't of Health & Welfare*, 114 Idaho 281, 756 P.2d 398 (1988).

56-105 — 56-107. Prospective payments — Adjustment— Audit and settlement. [Repealed.]

STATUTORY NOTES

Compiler's Notes.

These sections, which comprised I.C. §§ 56-105 to 56-107, as added by 1981, ch. 159, § 1, p. 271, were repealed by S.L. 1999, ch. 82, § 9, p. 265, effective July 1, 1999.

56-108. Property reimbursement — Facilities will be paid a property rental rate, property taxes and reasonable property insurance. — The provisions of this section shall not apply to hospital-based facilities which are subject to the provisions of section 56-120, Idaho Code, or to intermediate care facilities for people with intellectual disabilities which are subject to the provisions of section 56-265, Idaho Code. The provisions of this

section are applicable to all other facilities. The property rental rate includes compensation for major movable equipment but not for minor movable equipment. The property rental rate is paid in lieu of payment for amortization, depreciation, and interest for financing the cost of land and depreciable assets. Prior to final audit, the director shall determine an interim rate that approximates the property rental rate. The property rental rate shall be determined as follows:

(1) Except as determined pursuant to this section:

$$\text{Property rental rate} = \frac{(\text{"Property base"}) \times (\text{"Change in building costs"}) \times (40 - \text{"Age of facility"})}{40}$$

where:

(a) "Property base" = \$9.24 for all facilities.

(b) "Change in building costs" = 1.0 from April 1, 1985, through December 31, 1985. Thereafter "Change in building costs" will be adjusted for each calendar year to reflect the reported annual change in the building cost index for a class D building in the western region, as of September of the prior year, published by the Marshall Swift Valuation Service. However, for freestanding skilled care facilities "change in building costs" = 1.145 from July 1, 1991, through December 31, 1991. Thereafter, change in building costs for freestanding skilled care facilities will be adjusted each calendar year to reflect the reported annual change in the building cost index for a class D building in the western region, as of September of the prior year as published by the Marshall Swift Valuation Service or the consumer price index for renter's costs available in September of the prior year, whichever is greater.

(c) "Age of facility" = the director shall determine the effective age, in years, of the facility by subtracting the year in which the facility, or portion thereof, was constructed from the year in which the rate is to be applied. No facility or portion thereof shall be assigned an age of more than thirty (30) years. However, beginning July 1, 1991, for freestanding skilled care facilities, "age of facility" will be a revised age which is the lesser of the age established under other provisions of this section or the age which most closely yields the rate allowable to existing facilities as of June 30, 1991, under subsection (1) of this section. This revised age shall not increase over time.

(i) If adequate information is not submitted by the facility to document that the facility, or portion thereof, is newer than thirty (30) years, the director shall set the effective age at thirty (30) years. Adequate documentation shall include, but not be limited to, such documents as copies of building permits, tax assessors' records, receipts, invoices, building contracts, and original notes of indebtedness. The director shall compute an appropriate age for facilities when documentation is provided to reflect expenditures for building expansion or remodeling prior to the effective date of this section. The computation shall decrease the age of a facility by an amount consistent with the expenditure and the square footage impacted and shall be calculated as follows:

1. Determine, according to indexes published by the Marshall Swift Valuation Service, the construction cost per square foot of an average class D convalescent hospital in the western region for the year in which the expansion or renovation was completed.

2. Multiply the total square footage of the building following the expansion or renovation by the cost per square foot to establish the estimated replacement cost of the building at that time.

3. The age of the building at the time of construction shall be multiplied by the quotient of total actual renovation or remodeling costs divided by replacement cost. If this number is equal to or greater than 2.0, the age of the building in years will be reduced by this number, rounded to the nearest whole number. In no case will the age be less than zero (0).

(ii) The director shall adjust the effective age of a facility when major repairs, replacement, remodeling or renovation initiated after April 1, 1985, would result in a change in age of at least one (1) year. Such changes shall not increase the allowable property rental rate by more than three-fourths (3/4) of the difference between the adjusted property base determined in subsections (1)(a) and (1)(b) of this section and the rental rate paid to the facility at the time of completion of such changes but before the change component has been added to said rate. The adjusted effective age of the facility will be used in future age determinations, unless modified by provisions of this chapter.

(iii) The director shall allow for future adjustments to the effective age of a facility or its rate to reimburse an appropriate amount for property expenditures resulting from new requirements imposed by state or federal agencies. The director shall, within twelve (12) months of verification of expenditure, reimburse the medicaid share of the entire cost of such new requirements as a one-time payment if the incurred cost for a facility is less than one hundred dollars (\$100) per bed.

(d) At no time shall the property rental rate, established under subsection (1) of this section, be less than that allowed in subsection (1)(c)(ii), with the rate in effect December 31, 1988, being the base. However, subsequent to the application of this paragraph, before any rate increase may be paid, it must first be offset by any rate decrease that would have been realized if the provisions of this paragraph had not been in effect.

(2) A "grandfathered rate" for existing facilities will be determined by dividing the audited allowable annual property costs, exclusive of taxes and insurance, for assets on hand as of January 1, 1985, by the total patient days in the period July 1, 1984, through June 30, 1985. The property rental rate will be the greater of the amount determined pursuant to subsection (1) of this section, or the grandfathered rate. The director shall adjust the grandfathered rate of a facility to compensate the owner for the cost of major repairs, replacement, expansion, remodeling and renovation initiated prior to April 1, 1985, and completed after January 1, 1985, but completed no later than December 31, 1985. For facilities receiving a grandfathered rate making major repairs, replacement, expansion, remodeling or renovation, initiated after January 1, 1986, the director shall compare the

grandfathered rate of the facility to the actual depreciation, amortization, and interest for the current audit period plus the per diem of the recognized cost of major repairs, replacement, expansion, remodeling or renovation, amortized over the American hospital association guideline component useful life. The greater of the two (2) numbers will be allowed as the grandfathered rate. Such changes shall not increase the allowable grandfathered rate by more than three-fourths ($3/4$) of the difference between the current grandfathered rate and the adjusted property base determined in subsections (1)(a) and (1)(b) of this section.

(3) The property rental rate per day of care paid to facilities with leases signed prior to March 30, 1981, will be the sum of the annualized allowed lease costs and the other annualized property costs for assets on hand as of January 1, 1985, exclusive of taxes and insurance when paid separately, divided by total patient days in the period June 30, 1983, through July 1, 1984. Effective July 1, 1989, the director shall adjust the property rental rate of a leased skilled facility under this paragraph to compensate for the cost of major repairs, replacement, expansion, remodeling and renovation initiated after January 1, 1985, by adding the per diem of the recognized cost of such expenditures amortized over the American hospital association guideline component useful life. Such addition shall not increase the allowable property rental rate by more than three-fourths ($3/4$) of the difference between the current property rental rate and the adjusted property base as determined in paragraphs (a) and (b) of subsection (1) of this section. Where such leases contain provisions that bind the lessee to accept an increased rate, reimbursement shall be at a rate per day of care which reflects the increase in the lease rate. Where such leases bind the lessee to the lease and allow the rate to be renegotiated, reimbursement shall be at a rate per day of care which reflects an annual increase in the lease rate not to exceed the increase in the consumer price index for renters costs. After the effective date of this subsection, if such a lease is terminated or if the lease allows the lessee the option to terminate other than by purchase of the facility, the property rental rate shall become the amount determined by the formula in subsection (1) of this section as of the date on which the lease is or could be terminated.

(4)(a) In the event of a sale, the buyer shall receive the property rental rate as provided in subsection (1) of this section, except under the conditions of paragraph (b) of this subsection or except in the event of the first sale for a freestanding skilled care facility receiving a grandfathered rate after June 30, 1991, whereupon the new owner shall receive the same rate that the seller would have received at any given point in time.

(b) In the event of a forced sale of a facility where the seller has been receiving a grandfathered rate, the buyer will receive a rate based upon his incurred property costs, exclusive of taxes and insurance, for the twelve (12) months following the sale, divided by the facility's total patient days for that period, or the property rental rate, whichever is higher, but not exceeding the rate that would be due the seller.

History.

I.C., § 56-108, as added by 1985, ch. 128, § 3, p. 312; am. 1986, ch. 87, § 3, p. 250; am. 1989, ch. 417, § 1, p. 1018; am. 1990, ch. 67,

§ 1, p. 146; am. 1991, ch. 160, § 1, p. 384; am. 1993, ch. 351, § 1, p. 1306; am. 1999, ch. 82, § 3, p. 265; am. 2010, ch. 235, § 42, p. 542; am. 2011, ch. 164, § 3, p. 463.

STATUTORY NOTES**Amendments.**

The 2010 amendment, by ch. 235, in the first sentence in the introductory paragraph, substituted “people with intellectual disabilities” for “the mentally retarded.”

The 2011 amendment, by ch. 164, updated the last section reference in the first sentence of the introductory paragraph in light of the effects of the 2011 legislation.

Compiler’s Notes.

For more on the Marshall Swift Valuation

Service, see <http://www.marshallswift.com/p-30-marshall-valuation-service.aspx>.

The phrases “the effective date of this section” in paragraph (1)(c)(i) and “the effective date of this subsection” near the end of subsection (3) refer to the effective date of the enactment of this section by S.L. 1985, ch. 128, which was effective April 1, 1985.

The words enclosed in parentheses so appeared in the law as enacted.

JUDICIAL DECISIONS**Application.**

In a nursing facility’s action seeking reimbursement for property costs, the department of health and welfare erred in applying the

occupancy adjustment factor to the nursing facility’s property taxes. *Hillcrest Haven Convalescent Ctr. v. Idaho Dep’t of Health & Welfare*, 142 Idaho 123, 124 P.3d 999 (2005).

56-109. Property rental rate implementation schedule. [Repealed.]**STATUTORY NOTES****Compiler’s Notes.**

This section, which comprised 1985, ch.

128, § 4, p. 312, was repealed by S.L. 1999, ch. 82, § 9, effective July 1, 1999.

PART B. FREE-STANDING SKILLED CARE AND INTERMEDIATE CARE FACILITIES**56-110 — 56-112. New and existing free-standing skilled care facilities — Free-standing intermediate care facilities. [Repealed.]****STATUTORY NOTES****Compiler’s Notes.**

The following sections were repealed by S.L. 1999, ch. 82, § 9, p. 265, effective July 1, 1999.

§ 56-110, which comprised 1981, ch. 159, § 1, p. 271; am. 1984, ch. 118, § 2, p. 264; am. 1985, ch. 128, § 5, p. 312; am. 1989, ch. 425, § 1, p. 1052.

§ 56-111, which comprised 1981, ch. 159, § 1, p. 271; am. 1984, ch. 118, § 3, p. 264; am. 1985, ch. 128, § 6, p. 312.

§ 56-112, as added by 1981, ch. 159, § 1, p. 271; am. 1984, ch. 118, § 4, p. 264; am. 1985, ch. 128, § 7, p. 312.

56-113. Intermediate care facilities for people with intellectual disabilities. [Repealed.]

Repealed by S.L. 2011, ch. 164, § 4, effective July 1, 2011.

History.

I.C., § 56-113, as added by 1996, ch. 338, § 1, p. 1137; am. 1999, ch. 82, § 4, p. 265; am.

2009, ch. 34, § 2, p. 95; am. 2010, ch. 235, § 43, p. 542; am. 2010, ch. 296, § 3, p. 801; am. 2011, ch. 151, § 26, p. 414.

STATUTORY NOTES**Compiler's Notes.**

This section was amended by S.L. 2011, ch. 151, § 26, but that amendment could not be

given effect because of the repeal of the section by S.L. 2011, ch. 164, § 4.

56-114. Freestanding special care facilities. — For a freestanding special care facility which seeks to contract for the first time to provide medicaid services to recipients, the director shall determine payment for such facility as specified in rule.

History.

I.C., § 56-114, as added by 1988, ch. 155, § 2, p. 279; am. 1999, ch. 82, § 5, p. 265.

56-115. Capitalization of assets. [Repealed.]**STATUTORY NOTES****Compiler's Notes.**

This section, which comprised I.C., § 56-115, as added by 1989, ch. 362, § 1, p. 907,

was repealed by S.L. 1999, ch. 82, § 9, p. 265, effective July 1, 1999.

56-116. [Reserved.]

56-117. Payment of special rates. — The director shall have authority to pay facilities at special rates for care given to patients who have long-term care needs not adequately reflected in the rates calculated pursuant to the principles set forth in section 56-265, Idaho Code. The payment for such specialized care will be in addition to any payments made in accordance with other provisions of this chapter. The incremental cost to a facility that exceeds the rate for services provided pursuant to the provisions of section 56-265, Idaho Code, will be excluded from the computation of payments or rates under other provisions of this chapter. Until the facility applies for a special rate, patients with such needs will be included in the computation of the facility's rates following the principles described in section 265 [56-265], Idaho Code.

History.

I.C., § 56-117, as added by 1989, ch. 362,

§ 2, p. 907; am. 1999, ch. 82, § 6, p. 265; am. 2011, ch. 164, § 5, p. 463.

STATUTORY NOTES**Amendments.**

The 2011 amendment, by ch. 164, updated the section references throughout the section in light of the effects of the 2011 legislation.

section was added by the compiler to correct the inadvertent striking of part of the section reference by the 2011 amendment.

Compiler's Notes.

The bracketed insertion near the end of the

56-118. Reimbursement rates. — (1) The department shall implement a methodology for reviewing and determining reimbursement rates to private businesses providing developmental disability agency services, mental health services, service coordination and case management services and residential habilitation agency services by rule.

(2) In addition to any policy or federal statutory requirements, such methodology shall incorporate, at a minimum, the actual cost of providing quality services, including personnel and total operating expenses, directly related to providing such services which shall be provided by the private business entities.

(3) The results of this review and analysis do not guarantee a change in reimbursement rates, but shall be a fair and equitable process for establishing and reviewing such rates.

History.

I.C., § 56-118, as added by 2005, ch. 86, § 1, p. 304; am. 2011, ch. 164, § 6, p. 463.

STATUTORY NOTES

Prior Laws.

Former § 56-118, which comprised I.C., § 56-118, as added by 1989, ch. 362, § 3, p. 907, was repealed by S.L. 1999, ch. 82, § 9, p. 265, effective July 1, 1999.

Amendments.

The 2011 amendment, by ch. 164, rewrote the section to the extent that a detailed comparison is impracticable.

JUDICIAL DECISIONS

Economy or Efficiency of Providers.

As the Idaho department of health and welfare did not exercise any judgment regarding the economy or efficiency of providers in arriving at a 10% default rate for indirect costs under subsection (1) of this section,

there was no basis to alter or amend an order denying its motion for summary judgment. *Unity Serv. Coordination, Inc. v. Armstrong*, 2011 U.S. Dist. LEXIS 34659 (D. Idaho Mar. 30, 2011).

56-119. [Reserved.]

PART C. HOSPITAL-BASED FACILITIES

56-120. Property reimbursement for hospital-based skilled nursing facilities. — In addition to the basic payment per patient-day of care, each hospital-based nursing facility shall be paid on a prospective basis its actual property and utility costs per patient-day, to be determined by dividing its total projected property and utility costs, as calculated from the cost report selected for rate setting, by the total number of patient-days from the same cost reporting period.

History.

I.C., § 56-120, as added by 1981, ch. 159, § 1, p. 271; am. 1984, ch. 118, § 6, p. 264; am.

1985, ch. 128, § 9, p. 312; am. 1999, ch. 82, § 7, p. 265; am. 2000, ch. 274, § 147, p. 799.

56-121. New hospital-based facilities. [Repealed.]**STATUTORY NOTES****Compiler's Notes.**

This section, which comprised I.C., § 56-121, as added by 1981, ch. 159, § 1, p. 271;

am. 1984, ch. 118, § 7, p. 264; am. 1985, ch. 128, § 10, p. 312, was repealed by S.L. 1999, ch. 82, § 9, p. 265, effective July 1, 1999.

56-122 — 56-129. [Reserved.]**PART D. MISCELLANEOUS****56-130. Development of payment, adjustment, audit and settlement mechanisms. [Repealed.]****STATUTORY NOTES****Compiler's Notes.**

This section, which comprised I.C., § 56-130, as added by 1981, ch. 159, § 1, p. 271;

am. 1993, ch. 327, § 25, p. 1186, was repealed by S.L. 1999, ch. 82, § 9, p. 265, effective July 1, 1999.

56-131. Multiple-use plans. — The director shall promulgate such rules, as the director deems advisable to enable and encourage facilities to adopt plans for offering additional services or programs within their institutions which will promote appropriate levels of care for recipients residing in their service areas and, as a result, achieve cost savings for the medicaid program. In developing such rules, the director shall consult with representatives of freestanding skilled care, freestanding intermediate care, freestanding special care, and hospital-based facilities.

History.

I.C., § 56-131, as added by 1981, ch. 159,

§ 1, p. 271; am. 1988, ch. 155, § 3, p. 279; am. 1999, ch. 82, § 8, p. 265.

56-132. Disputes. — (a) If any facility wishes to contest the way in which a rule or contract provision relating to the prospective, cost-related reimbursement system was applied to such facility by the director, it shall first pursue the administrative review process set forth in section 56-133, Idaho Code.

(b) The administrative review process in section 56-133, Idaho Code, need not be exhausted if a facility wishes to challenge the legal validity of a statute, rule, or contract provision.

History.

I.C., § 56-132, as added by 1981, ch. 159, § 1, p. 271.

56-133. Administrative review process. — (a) Within thirty (30) days after a facility is notified of an action or determination it wishes to challenge, such facility shall request in writing that the director review such determination. The request shall be signed by the licensed administrator of the facility, shall identify the challenged determination and the date thereof,

and shall state as specifically as practicable the grounds for its contention that the determination was erroneous. Copies of any documentation on which such facility intends to rely to support its position shall be included with the request.

(b) After receiving a request meeting the above criteria, the director will contact the facility to schedule a conference for the earliest mutually convenient time. The conference shall be scheduled for no later than thirty (30) days after a properly-completed request is received, unless both parties agree in writing to a specified later date.

(c) The facility and the director shall attend the conference. In addition, representatives selected by the facility may attend and participate. The facility shall bring to the conference, or provide to the director in advance of the conference, any documentation on which the facility intends to rely to support its contentions. The parties shall clarify and attempt to resolve the issues at the conference. If additional documentation is needed to resolve the issues, a second session of the conference shall be scheduled for not later than thirty (30) days after the initial session, unless both parties agree in writing to a specific later date.

(d) A written decision by the director will be furnished to the facility within thirty (30) days after the conclusion of the conference.

(e) If the facility desires review of an adverse decision of the director, it shall, within twenty-eight (28) days following receipt of such decision, request a hearing in writing on the contested matter, in accordance with the provisions of chapter 52, title 67, Idaho Code.

History.

I.C., § 56-133, as added by 1981, ch. 159,
§ 1, p. 271; am. 1993, ch. 216, § 94, p. 587.

JUDICIAL DECISIONS

Cited in: Idaho County Nursing Home v. Inc. v. Idaho Dep't of Health & Welfare, 128 Idaho Dep't of Health & Welfare, 120 Idaho 933, 821 P.2d 988 (1991); Skyview-Hazeldel, Idaho 756, 918 P.2d 1201 (1996).

56-134. Denial, suspension, revocation of license or provisional license — Penalty. — The director is authorized to deny, suspend, or revoke a license or provisional license or, in lieu thereof or in addition thereto, assess monetary penalties of a civil nature not to exceed one thousand dollars (\$1,000) per violation in any case in which it finds that the facility, or any partner, officer, director, owner of five per cent (5%) or more of the assets of the facility, or managing employee:

- (1) Failed or refused to comply with the requirements of this chapter, or the rules and regulations established hereunder; or
- (2) Has knowingly or with reason to know made a false statement of a material fact in any record required by this chapter; or
- (3) Refused to allow representatives or agents of the director to inspect all books, records, and files required to be maintained by the provisions of this chapter, or to inspect any portion of the facility's premises; or
- (4) Wilfully prevented, interfered [interfered] with, or attempted to

impede in any way the work of any duly authorized representative of the director and the lawful enforcement of any provision of this chapter; or (5) Wilfully prevented or interfered [interfered] with any representative of the director in the preservation of evidence of any violation of any of the provisions of this chapter, or the rules and regulations promulgated hereunder.

History.

I.C., § 56-134, as added by 1981, ch. 159,
§ 1, p. 271.

STATUTORY NOTES**Compiler's Notes.**

The bracketed term "interfered" was in-

serted by the compiler in subsections (4) and (5) to correct a misspelling.

56-134A. Remedies for deficient care. — If the director finds that a facility is deficient in, or no longer meets, any of the requirements of participation set forth in 42 U.S.C. 1396r(b), (c) and (d), which are hereby incorporated by reference, the director has the authority, as provided in title XIX of the social security act, to:

- (1) terminate the facility's participation in the medicaid program;
- (2) deny payment;
- (3) assess and collect a civil money penalty with interest;
- (4) appoint temporary management of the facility;
- (5) close the facility and/or transfer residents to another certified facility;
- (6) direct a plan of correction;
- (7) ban admission of persons with certain diagnoses or requiring specialized care;
- (8) ban all admissions to the facility;
- (9) assign monitors to the facility; or
- (10) reduce the licensed bed capacity.

History.

I.C., § 56-134A, as added by 1990, ch. 303,
§ 1, p. 833.

STATUTORY NOTES**Federal References.**

Title XIX of the social security act, referred to in this section, is compiled as 42 U.S.C.S. § 1396 et seq.

Effective Dates.

Section 2 of S.L. 1990, ch. 303 provided that the act should take effect on and after October 1, 1990.

56-135. Adoption of rules. — The director shall adopt, promulgate, amend, and rescind such administrative rules as are necessary to carry out the policies and purposes of this chapter, as provided in chapter 52, title 67, Idaho Code.

History.

I.C., § 56-135, as added by 1981, ch. 159,
§ 1, p. 271.

STATUTORY NOTES

Effective Dates.

Section 3 of S.L. 1981, ch. 159 read: “(1) An emergency existing therefor, which emergency is hereby declared to exist, subsection (c) of Section 56-104, Idaho Code, as enacted by Section 1 of this act shall be in full force and effect on and after its passage and approval.

“(2) Sections 56-101, 56-105, 56-106, 56-107, 56-130 and all other subsections or sec-

tions necessary to enable the director of the department of health and welfare to promulgate rules and regulations prior to January 1, 1982, to be effective January 1, 1982, shall be in full force and effect on and after July 1, 1981.

“(3) Section 2 of this act and all other codified sections of this act shall be in full force and effect on and after January 1, 1982.”

JUDICIAL DECISIONS

Cited in: Idaho County Nursing Home v. Idaho Dep’t of Health & Welfare, 120 Idaho 933, 821 P.2d 988 (1991).

PART E. PHYSICIANS AND DENTISTS

56-136. Physician and dentist reimbursement. [Repealed.]

Repealed by S.L. 2011, ch. 164, § 7, effective July 1, 2011.

History.

I.C., § 56-136, as added by 1995, ch. 230, § 1, p. 782; am. 2006, ch. 382, § 2, p. 1200;

am. 2009, ch. 34, § 3, p. 95; am. 2010, ch. 296, § 4, p. 801.

CHAPTER 2

PUBLIC ASSISTANCE LAW

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- 56-221. Confidential character of public assistance records.
- 56-222. Misuse of public assistance lists and records.
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- 56-227B. Provider fraud — Damages.
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- 56-227E. Obstruction of investigation.
- 56-227F. Public assistance benefit cards — Prohibited uses.
- 56-228. Limitations of act.
- 56-229. Separability.
- 56-230. Short title.

SECTION.

- 56-231. Public assistance in locating and determining the financial resources of parents and other persons liable for support of dependents.
- 56-232. Medical assistance programs — Contracts with independent agencies for administration of programs.
- 56-233. Procedure for disbursement of funds to recipients.
- 56-233a. Costs of nonfederal share of skilled and intermediate nursing care for medically eligible persons — Source of payment. [Repealed.]
- 56-234. Legislative intent.
- 56-234A. Definitions.
- 56-235. Southwest Idaho treatment center.
- 56-235A. Prohibitions, restrictions and limitations on admission.
- 56-235B. Discharge planning — Authorization to discharge.
- 56-235C. Notice of discharge — Request for hearing.
- 56-235D. Appeals.
- 56-235E. Rulemaking authority.
- 56-236. Short title.
- 56-237. Purpose.
- 56-238. Definitions.
- 56-239. CHIP Plan B.
- 56-240. Children's access card program.
- 56-241. Small business health insurance pilot program.
- 56-242. Idaho health insurance access card.
- 56-243, 56-244. [Repealed.]
- 56-245 — 56-249. [Reserved.]
- 56-250. Short title.
- 56-251. Legislative intent.
- 56-252. Definitions.
- 56-253. Powers and duties of the director.
- 56-254. Eligibility for medical assistance.
- 56-255. Medical assistance program — Services to be provided.
- 56-256. Preventive health assistance.
- 56-257. Copayments.
- 56-258, 56-259. [Reserved.]
- 56-260. Short title.
- 56-261. Legislative findings and intent.
- 56-262. Definitions.
- 56-263. Medicaid managed care plan.
- 56-264. Rulemaking authority.
- 56-265. Provider payment.
- 56-266. Authorization to obtain federal approval.

56-201. Definitions. — As used in this act:

- (a) "State department" means the state department of health and welfare;
- (b) "Director" means the director of the department of health and welfare;
- (c) "Public welfare" means public assistance and social services;

(d) "Social services" means activities of the department in efforts to bring about economic, social and vocational adjustment of families and persons;

(e) "Public assistance" includes general assistance, old-age assistance, aid to the blind, assistance to families with children, aid to the disabled, and medical assistance;

(f) "General assistance" means direct assistance in cash, direct assistance in kind, and supplementary assistance;

(g) "Direct assistance in cash" means money payments to eligible people not classified as old-age assistance, or aid to the blind, or assistance to families with children, or aid to the disabled, or medical assistance;

(h) "Direct assistance in kind" means payments to others on behalf of a person or family for food, rent, clothing, and other normal subsistence needs;

(i) "Supplementary assistance" means payments to others on behalf of a person or family for transportation and costs incidental to vocational adjustment or employment;

(j) "Old-age assistance" means money payments to or on behalf of needy aged people;

(k) "Aid to the blind" means money payments to or on behalf of blind people who are needy;

(l) "Assistance to families with children" means money payments, direct assistance in kind, supplementary assistance, and social services targeted toward self-sufficiency with respect to or on behalf of eligible families with children;

(m) "Aged" means any person sixty-five (65) years or older;

(n) "Aid to the disabled" means money payments to or on behalf of needy individuals who are disabled, and whose disability prevents self-support through employment for a period of at least one (1) year from the date of onset of the disability;

(o) "Medical assistance" means payments for part or all of the cost of such care and services allowable within the scope of title XIX of the federal social security act as amended as may be designated by department rule;

(p) "Provider" means any individual, partnership, association, corporation or organization, public or private, who provides residential or assisted living services, certified family home services, nursing facility services, services offered pursuant to the medicaid program, or services offered pursuant to titles IV or XX of the social security act;

(q) "Needy" means the condition where a person or family does not have income and available resources in accordance with the provisions of section 56-210, Idaho Code.

History.

1941, ch. 181, § 1, p. 379; am. 1945, ch. 109, § 1, p. 165; am. 1957, ch. 323, § 1, p. 379; am. 1961, ch. 217, § 1, p. 346; am. 1966 (2nd E.S.), ch. 11, § 1, p. 28; am. 1967, ch. 373, § 13, p. 1071; am. 1967 (1st E.S.), ch. 5, § 1, p. 23; am. 1972, ch. 44, § 5, p. 67; am. 1972, ch. 196, § 8,

p. 483; am. 1974, ch. 23, § 162, p. 633; am. 1974, ch. 233, § 1, p. 1590; am. 1977, ch. 226, § 1, p. 673; am. 1978, ch. 246, § 1, p. 537; am. 1981, ch. 179, § 1, p. 313; am. 1982, ch. 59, § 5, p. 91; am. 1989, ch. 193, § 15, p. 475; am. 1996, ch. 50, § 1, p. 147; am. 2000, ch. 274, § 148, p. 799.

STATUTORY NOTES

Cross References.

Blind persons fishing without license, § 36-403.

Director of department of health and welfare, §§ 56-1002, 56-1003.

Foster homes and day care homes for children, licensing, §§ 39-1208 to 39-1224.

Hard-to-place children residing in foster or institutional homes, providing permanent homes, § 56-801 et seq.

Health facilities, hospitals and mental retardation and community health centers, § 39-1401 et seq.

Migratory labor housing, cooperation of county commissioners with federal government, § 31-856.

Regional mental health services, § 39-3123 et seq.

Revocation of permit to purchase alcohol, dependence on public assistance, § 23-519.

Sterilization, § 39-3901 et seq.

Federal References.

Title XIX of the social security act, referred to in subsection (o) of this section, is compiled as 42 U.S.C. § 1396 et seq.

Titles IV and XX of the social security act, referred to in subsection (p) of this section, are compiled as 42 U.S.C. §§ 601-660, and §§ 1397 to 1397f, respectively.

Compiler's Notes.

The term "this act" in the introductory paragraph refers to S.L. 1941, ch. 181, which is compiled as §§ 56-201 to 56-203, 56-206 to 56-208, 56-210, 56-211 to 56-214, 56-215 to 56-217, 56-219 to 56-224, 56-227, and 56-228 to 56-230. The reference probably should be to "this chapter," being chapter 2, title 56, Idaho Code.

S.L. 1943, ch. 31, § 1 specifically repealed the initiative measure known as the Senior Citizens' Grants Act; § 2 revived all acts and parts of acts repealed or in any manner abridged by the Senior Citizens' Grants Act, and declared them in full force and effect, as fully as though the said Senior Citizens' Grants Act had never existed, and particularly, and without limiting the generality of the reviving clause, declared chs. 180 and 181 of S.L. 1941 to be revived and in full force and effect. See also, *Scott v. Gossett*, 66 Idaho 329, 158 P.2d 804 (1945).

JUDICIAL DECISIONS

ANALYSIS

Constitutionality.

Eligibility for aid.

Repeal of senior citizens' grants act.

Constitutionality.

This law does not lend the credit of the state to an individual contrary to the provisions of Idaho Const., Art. VIII, § 2. State ex rel. Nielson v. Lindstrom, 68 Idaho 226, 191 P.2d 1009 (1948).

This act is not unconstitutional as a local and special law. State ex rel. Nielson v. Lindstrom, 68 Idaho 226, 191 P.2d 1009 (1948).

Eligibility for Aid.

Since the eligibility of a family for aid to families with dependent children benefits is contingent upon the presence of a "needy" child in the household, benefits were properly denied to claimant where evidence supported determination that claimant's child was not needy. Davison v. State, Dep't of Health & Welfare, 104 Idaho 442, 660 P.2d 54 (1982),

modified on other grounds, 105 Idaho 784, 673 P.2d 384 (1983).

Repeal of Senior Citizens' Grants Act.

Decision of supreme court that legislature had constitutional power to enact statute repealing Senior Citizens' Grants Act will not be departed from, since after the decision a general election had taken place, new officials elected and no action taken to repeal the repealing statute. *Scott v. Gossett*, 66 Idaho 329, 158 P.2d 804 (1945).

Cited in: Newland v. Child, 73 Idaho 530, 254 P.2d 1066 (1953); State ex rel. Rich v. Idaho Power Co., 81 Idaho 487, 346 P.2d 596 (1959); Curtis v. Child, 95 Idaho 63, 501 P.2d 1374 (1972); Madsen v. State, Dep't of Health & Welfare, 114 Idaho 182, 755 P.2d 479 (Ct. App. 1988).

RESEARCH REFERENCES

C.J.S. — 81 C.J.S., Social Security and Public Welfare, § 1 et seq.

A.L.R. — Appointed counsel, refusal to ac-

cept appointment to defend indigent, or to proceed in such defense, as contempt. 36 A.L.R.3d 1221.

Alcoholic as entitled to public assistance under poor laws. 43 A.L.R.3d 554.

Sufficiency of notice or hearing required prior to termination of welfare benefits. 47 A.L.R.3d 277.

Chiropractors, limitation on right to participate in public medical welfare programs. 8 A.L.R.4th 1066.

Criminal liability under state laws in connection with application for or receipt of public welfare benefits. 22 A.L.R.4th 534.

Judicial review under 42 U.S.C., § 1316 (a)(3-5) of determination by secretary of health, education and welfare that state public assistance plan does not conform to federal requirements. 18 A.L.R. Fed. 831.

56-202. Duties of director of state department of health and welfare. — The director of the state department of health and welfare shall:

- (a) Administer public assistance and social services to eligible people;
- (b) Promulgate, adopt and enforce such rules and such methods of administration as may be necessary or proper to carry out the provisions of title 56, Idaho Code, except as provided in section 56-203A, Idaho Code;
- (c) Conduct research and compile statistics relating to public welfare;
- (d) Prepare for the governor and legislature an annual report of activities and expenditures; make such reports in such form and containing such information as the federal government may from time to time require; and comply with such provisions as the federal government may from time to time find necessary to assure the correctness and verification of such reports;
- (e) Cooperate with the federal government through its appropriate agency or instrumentality in establishing, extending, and strengthening services for the protection and care of homeless, dependent, and neglected children, and children in danger of becoming delinquent; and to undertake other services for children authorized by law;
- (f) Cooperate with the federal government through its appropriate agency or instrumentality in establishing and maintaining a comprehensive system of in-home services as defined in section 67-5006, Idaho Code, designed to assist older persons, as defined in section 67-5006, Idaho Code, of Idaho to continue living in an independent and dignified home environment and to undertake other services for older persons as authorized by law;
- (g) Exercise the opt out provision in section 115 of the personal responsibility and work opportunity reconciliation act of 1996, P. L. 104-193. Consistent with this, the department may provide food stamps and services funded under title 4A (including cash assistance, TANF supportive services and at risk payments) to a person who has been convicted of a felony involving a controlled substance as defined in chapter 27, title 37, Idaho Code, if they comply with the terms of a withheld judgment, probation or parole.

History.

1941, ch. 181, § 2, p. 379; am. 1945, ch. 109, § 2, p. 165; am. 1967, ch. 373, § 14, p. 1071; am. 1976, ch. 9, § 6, p. 25; am. 1980, ch. 325,

§ 10, p. 820; am. 1982, ch. 155, § 1, p. 421; am. 1996, ch. 50, § 2, p. 147; am. 2000, ch. 198, § 1, p. 489; am. 2004, ch. 257, § 1, p. 731.

STATUTORY NOTES

Cross References.

Department of health and welfare, generally, § 56-1001 et seq.

Director of department of health and welfare, duties as to adoption, § 16-1506.

Industrial commission, duty to cooperate with, § 72-517.

Federal References.

The personal responsibility and work opportunity reconciliation act of 1996, referred

to in subsection (g), is generally codified as 8 U.S.C.S. § 1601 et seq. Section 115 of that act is codified as 21 U.S.C.S. § 862a.

The reference to "title 4A" in subsection (g) is a reference to part A of title IV of chapter 7 of the social security act. See 42 USCS § 601 et seq.

Effective Dates.

Section 11 of S.L. 1980, ch. 325 declared an emergency. Approved April 2, 1980.

JUDICIAL DECISIONS

Deference to Department's Interpretation.

Idaho department of health and welfare was correct in determining that the home of a Medicaid applicant and her husband should be excluded as a resource in a resource assessment, because the couple's interest in a trust, to which the home was transferred, did not fit within the definition of "resource." Moreover, the transfer of the home from the trust back to the applicant did not comport with Medicaid eligibility provisions; the department's

interpretation of its rule and federal law was reasonable and worthy of deference. *Stafford v. Idaho Dep't of Health & Welfare* (In re *Stafford*), 145 Idaho 530, 181 P.3d 456 (2008).

Cited in: *Curtis v. Child*, 95 Idaho 63, 501 P.2d 1374 (1972); *University of Utah Medical Center v. Bonneville County*, 96 Idaho 432, 529 P.2d 1304 (1974); *Haggard v. Idaho Dep't of Health & Welfare*, 98 Idaho 55, 558 P.2d 84 (1977).

RESEARCH REFERENCES

C.J.S. — 81 C.J.S., Social Security and Public Welfare, §§ 12 to 25.

56-203. Powers of state department. — The state department shall have the power to:

(1) Enter into contracts and agreements with the federal government through its appropriate agency or instrumentality whereby the state of Idaho shall receive federal grants-in-aid or other benefits for public assistance or public welfare purposes under any act or acts of congress heretofore or hereafter enacted;

(2) Cooperate with the federal government in carrying out the purposes of any federal acts pertaining to public assistance or welfare services, and in other matters of mutual concern;

(3) Cooperate with county governments and other branches of government and other agencies, public or private, in administering and furnishing public welfare services;

(4) Enter into reciprocal agreements with other states relative to the provisions of public assistance and welfare services to residents and nonresidents;

(5) Initiate and administer public assistance and social services for persons with physical or mental disabilities;

(6) Establish such requirements of residence for public assistance under this act as may be deemed advisable, subject to any limitations imposed in this act;

(7) Define persons entitled to medical assistance in such terms as will

meet requirements for federal financial participation in medical assistance payments;

(8) Accept the legal custody of children committed to it by district courts of this state under the Child Protective Act, to provide protective supervision as defined therein, to place children for adoption when such children are in the legal custody of the state department and are legally available for adoption and to exercise consent to adoption when the authority to do so is vested in the department by court order or legally authorized parental relinquishment;

(9) Determine the amount, duration and scope of care and services to be purchased as medical assistance on behalf of needy eligible individuals;

(10) Manage and operate the southwest Idaho treatment center at Nampa, Idaho.

History.

1941, ch. 181, § 3, p. 379; am. 1945, ch. 109, § 3, p. 165; am. 1959, ch. 241, § 1, p. 523; am. 1961, ch. 217, § 2, p. 346; am. 1963, ch. 325, § 1, p. 936; am. 1966 (2nd E.S.), ch. 11, § 2, p.

28; am. 1967, ch. 373, § 15, p. 1071; am. 1967 (1st E.S.), ch. 5, § 2, p. 23; am. 1972, ch. 44, § 6, p. 67; am. 1973, ch. 161, § 1, p. 306; am. 2010, ch. 235, § 44, p. 542; am. 2011, ch. 102, § 2, p. 260.

STATUTORY NOTES

Cross References.

Child Protective Act, § 16-1601 et seq.
Federal aids, grants or moneys through the federal government, power of director to apply for and receive, § 39-105(4).

Amendments.

The 2010 amendment, by ch. 235, redesignated the subsections numerically; and in subsection (5), substituted "persons with physical or mental disabilities" for "persons physically or mentally handicapped."

The 2011 amendment, by ch. 102, substituted "southwest Idaho treatment center" for "Idaho state school and hospital" in subsection (10).

Compiler's Notes.

The term "this act" in subsection (6) refers to S.L. 1941, ch. 181, which is compiled as §§ 56-201 to 56-203, 56-206 to 56-208, 56-210, 56-211 to 56-214, 56-215 to 56-217, 56-219 to 56-224, 56-227, and 56-228 to 56-230.

The reference probably should be to "this chapter," being chapter 2, title 56, Idaho Code.

Section 16 of S.L. 1967, ch. 373 read: "The provisions of this act are hereby declared to be separable and if any provision of this act or the application of such provision to any person or circumstance is declared invalid for any reason, such declaration shall not affect the validity of remaining portions of this act."

Effective Dates.

Section 2 of S.L. 1959, ch. 241 provided that the act should take effect from and after July 1, 1959.

Section 17 of S.L. 1967, ch. 373 provided that the act should take effect from and after July 1, 1967.

Section 3 of S.L. 1967 (1st E.S.), ch. 5, as amended by § 3 of S.L. 1967 (1st E.S.), ch. 17, provided that the act should take effect from and after October 1, 1967.

Section 3 of S.L. 1973, ch. 161 declared an emergency. Approved March 17, 1973.

JUDICIAL DECISIONS

ANALYSIS

Action for reimbursement of state support payments.
Deference to department's interpretation.
Medically needy individuals.

Action for Reimbursement of State Support Payments.

Putative father failed to establish prejudice, one of four elements of his defense of laches, in his attempt to defeat state's claim

for reimbursement of state's support payments on behalf of his minor daughter. The Idaho child support guidelines (ICSG) and this section and Idaho R. Civ. P. 6(c)(6) take into account factors such as adjustment of

payment rate according to income, adjustment for amounts necessary to support current household and other child support obligations and defendant's need of the means of self support at a minimum subsistence level. State, Dep't of Health & Welfare ex rel. Washington ex rel. Nicklaus v. Annen, 126 Idaho 691, 889 P.2d 720 (1995).

Deference to Department's Interpretation.

Idaho department of health and welfare was correct in determining that the home of a Medicaid applicant and her husband should be excluded as a resource in a resource assessment, because the couple's interest in a trust, to which the home was transferred, did not fit within the definition of "resource." Moreover, the transfer of the home from the trust back to the applicant did not comport with Medicaid eligibility provisions; the department's interpretation of its rule and federal law was reasonable and worthy of deference. Stafford

v. Idaho Dep't of Health & Welfare (In re Stafford), 145 Idaho 530, 181 P.3d 456 (2008).

Medically Needy Individuals.

Regulation which imposed a fixed minimum income requirement as a condition to availability of nursing home services violated subsection (g) [now (7)], in that it failed to meet the requirements of federal financial participation that the state must use a flexible measurement of available income in determining financial ability of medically needy individuals. Curtis v. Child, 95 Idaho 63, 501 P.2d 1374 (1972).

Authority of department to define medically needy individuals is limited by the requirement of subsection (g) [now (7)] that the definition be in such terms as will meet the requirements for federal financial participation in medical assistance payments. Curtis v. Child, 95 Idaho 63, 501 P.2d 1374 (1972).

Cited in: University of Utah Medical Center v. Bonneville County, 96 Idaho 432, 529 P.2d 1304 (1974).

56-203A. Authority of department to enforce child support — Support enforcement services. — Whenever the department receives an application for public assistance on behalf of a child and it shall appear to the satisfaction of the department that said child has been abandoned by its parents, or that the child and one (1) parent have been abandoned by the other parent, or that the parent or other person who has a responsibility for the care, support or maintenance of such child has failed or neglected to give proper care or support to such child, the department shall take appropriate action under the provisions of this chapter, the abandonment or nonsupport statutes, or other appropriate statutes of this state to ensure that such parent or other person responsible shall pay for the care, support or maintenance of said dependent child.

The department may accept applications for support enforcement services on behalf of persons who are not recipients of public assistance and may take action as it deems appropriate to establish, modify or enforce support obligations against persons owing a duty to pay support. Action to establish support obligations may be taken under the abandonment or nonsupport statutes or other appropriate statutes of this state.

The department may charge fees to compensate it for services rendered in establishment of or enforcement of support obligations. The director shall, by rule, establish reasonable fees for support enforcement services, and said schedules of fees shall be made available to all applicants for support enforcement services. The department may, on showing of necessity, waive or defer any such fee.

Effective October 1, 1998, the department shall maintain a state case registry that contains records of each case in which enforcement services are being provided under this section and each child support order established or modified in the state from and after that date. Effective the same date, the department shall collect and disburse payments for all support orders related to cases for which services are provided under this section and each

child support order established or modified after January 1, 1994, that is subject to income withholding orders. For child support orders established prior to January 1, 1994, at the option of each county and upon payment of the cost of the service, the department shall collect and disburse payments.

History.

I.C., § 56-203A, as added by 1975, ch. 264, § 2, p. 712; am. 1990, ch. 327, § 1, p. 898; am. 1998, ch. 249, § 1, p. 814.

STATUTORY NOTES

Cross References.

Abandonment or nonsupport, criminal provisions regarding, § 18-401 et seq.

Paternity suit, order of support, § 7-1121.

Uniform Interstate Family Support Act, § 7-1001 et seq.

§ 56-203A, as added by 1969, ch. 189, § 1, p. 557; am. 1972, ch. 196, § 9, p. 483; am. 1974, ch. 23, § 163, p. 633, was repealed by S.L. 1975, ch. 264, § 1, p. 712 and the present material on the same subject substituted therefor.

Prior Laws.

Former § 56-203A, which comprised I.C.,

JUDICIAL DECISIONS

ANALYSIS

Child support.

Intervention.

Legislative policy.

Reimbursement for aid.

Reimbursement claim subject to res judicata.

Child Support.

A finding in favor of the mother and father was improper where the department of health and welfare possessed authority, pursuant to this section, to enforce child support regardless of the parents' marital status; however, the situation was limited to situations involving abandonment or nonsupport, so the supreme court remanded with directions to consider that issue with regard to the father. Dep't of Health & Welfare v. Housel, 140 Idaho 96, 90 P.3d 321 (2004).

Intervention.

Idaho R. Civ. P. 24(a), this section, and §§ 56-203B, 56-203C, and 7-1110 constituted a proper statutory basis for the state to intervene as a matter of right in the paternity action against defendant by mother of child seeking paternity declaration and past and future child support payments; magistrate did not err in granting state's motion to intervene. Henderson v. Smith, 128 Idaho 444, 915 P.2d 6 (1996).

Legislative Policy.

This section neither speaks to eligibility for providing aid to families with dependent children nor mentions the department of health and welfare's right to seek reimbursement. Rather, this section seems to implement a legislative policy to have appropriate action

taken to compel defaulting parents to live up to their support obligations. State, Dep't of Health & Welfare ex rel. Bowler v. Bowler, 116 Idaho 940, 782 P.2d 63 (Ct. App. 1989).

Reimbursement for Aid.

The department of health and welfare was not barred by res judicata from seeking reimbursement from former wife for aid to families with dependent children paid to former husband prior to the couple's divorce, even though the department did not assert its claim in the divorce proceedings. State, Dep't of Health & Welfare ex rel. Bowler v. Bowler, 116 Idaho 940, 782 P.2d 63 (Ct. App. 1989).

Reimbursement Claim Subject to Res Judicata.

This section is broad enough to allow an applicant for support enforcement services to request the state to pursue the applicant's reimbursement claim in a paternity and child support action; moreover, the state's interest in pursuing the action is derivative, and because the applicant derives a direct interest in the outcome of the litigation, the applicant is in privity with the state. Therefore, the applicant must raise any claims for reimbursement in the paternity action, otherwise any later attempt to raise the claims will be barred by res judicata. Lohman v. Flynn, 139 Idaho 312, 78 P.3d 379 (2003).

Cited in: State Dep't of Health & Welfare
ex rel. Gage v. Engelbert, 114 Idaho 89, 753
P.2d 825 (1988).

56-203B. Payment of public assistance for child constitutes debt to department by parents — Limitations — Department subrogated to rights. — Any payment of public assistance money made to or for the benefit of any dependent child or children creates a debt due or owing to the department by the parent or others who are responsible for support of such children in an amount equal to the support obligation as is subsequently determined by court order pursuant to the Idaho child support guidelines which debt arises at the end of the first month for which the payment of public assistance commences. If a judgment entered by the court under the Idaho child support guidelines is more than the public assistance expended, the amount in excess of the public assistance expended shall be payable to the custodial parent or caretaker. Provided, that where there has been a district court order, the debt shall be limited to the amount provided for by said order. The department shall have the right to petition the appropriate district court for modification of a district court order on the same grounds as a party to said cause. Where a child has been placed in foster care, and a written agreement for payment of support has been entered into by the responsible parent or parents and the department, the debt shall be limited to the amount provided for in said agreement. Provided, that if a court order for support is or has been entered, the provisions of said order shall prevail over the agreement.

The department shall be subrogated to the right of said child or children or person having the care, custody and control of said child or children to prosecute or maintain any support action existing under the laws of the state of Idaho to obtain reimbursement of moneys thus expended. If a district court order enters judgment for an amount of support to be paid by an obligor parent, the department shall be subrogated to the debt created by such order, and said money judgment shall be deemed to be in favor of the department. This subrogation shall specifically be applicable to temporary spouse support orders, family maintenance orders and alimony orders up to the amount paid by the department in public assistance moneys to or for the benefit of a dependent child or children but allocated to the benefit of said children on the basis of providing necessities for the caretaker of said children.

Debt under this section shall not be incurred by, nor at any time be collected from a parent or other person who would be or is eligible for or who is the recipient of public assistance moneys for the benefit of minor dependent children for the period such person or persons are in such status and the collection of the debt from such person would not be in the fiscal interest of the state or would not be in the best interest of the child(ren) for whom such person owes support.

History.

I.C., § 56-203B, as added by 1975, ch. 264,

§ 3, p. 712; am. 1994, ch. 289, § 1, p. 909; am. 1998, ch. 208, § 1, p. 735.

STATUTORY NOTES

Compiler's Notes.

The letters "ren" in the last paragraph enclosed in parentheses so appeared in the law as enacted.

JUDICIAL DECISIONS

ANALYSIS

Case caption.
Due process.
Intervention.
Necessaries furnished by third party.
Reimbursement for aid.
Wilfulness.

Case Caption.

This section and § 7-1107 do not require the state to actually place the child's name in the caption; the state can properly bring an action for reimbursement ex rel. the mother. State ex rel. Johnson v. Niederer, 123 Idaho 282, 846 P.2d 933 (Ct. App. 1992).

Due Process.

Where putative father did not present any argument or authority supporting his proposition that the state's decision to make assistance payments to mother deprived him of a protected interest, the failure to give him an opportunity to address her right of entitlement was not a denial of due process. State ex rel. Johnson v. Niederer, 123 Idaho 282, 846 P.2d 933 (Ct. App. 1992).

Intervention.

Idaho R. Civ. P. 24(a), this section, §§ 56-203A, 56-203C, and 7-1110 constituted a proper statutory basis for the state to intervene as a matter of right in the paternity action against defendant by mother of child seeking paternity declaration and past and future child support payments; magistrate did not err in granting state's motion to intervene. Henderson v. Smith, 128 Idaho 444, 915 P.2d 6 (1996).

Necessaries Furnished by Third Party.

The broad language of this section does not invite a collateral attack on eligibility determinations. Moreover, the statute should be read in conjunction with the remedial language of §§ 32-1002 [repealed] and 32-1003,

which prescribe duties of support and establish parental liability for "necessaries" furnished to a child by a third party "in good faith" when a parent has "neglected" to do so. State, Dep't of Health & Welfare ex rel. Bowler v. Bowler, 116 Idaho 940, 782 P.2d 63 (Ct. App. 1989).

Reimbursement for Aid.

The department of health and welfare was not barred by res judicata from seeking reimbursement from former wife for aid to families with dependent children paid to former husband prior to the couple's divorce, even though the department did not assert its claim in the divorce proceedings. State, Dep't of Health & Welfare ex rel. Bowler v. Bowler, 116 Idaho 940, 782 P.2d 63 (Ct. App. 1989).

Wilfulness.

The statutes providing for parental reimbursement of assistance to a child do not contain the term "wilfully." That word comes from a criminal statute, § 18-401, which authorizes imposition of criminal penalties in certain cases of nonsupport. It may be that the state is put to more rigorous elements of proof if it seeks criminal penalties, but no such penalties are at issue here. "Wilfulness" is not a required element of proof in a civil reimbursement case. State, Dep't of Health & Welfare ex rel. Bowler v. Bowler, 116 Idaho 940, 782 P.2d 63 (Ct. App. 1989).

Cited in: State Dep't of Health & Welfare ex rel. Gage v. Engelbert, 114 Idaho 89, 753 P.2d 825 (1988).

56-203C. Powers of department. — (1) In order to carry out its responsibilities imposed under this chapter and title IV-D of the social security act, the state department of health and welfare, through the attorney general or the respective county prosecuting attorney, or through private counsel is hereby authorized to take the following action:

(a) Petition to establish an order for support including medical support and support for a period during which a child received public assistance;

(b) Petition to establish paternity and order genetic testing of any individual involved in the paternity action;

(c) Petition to modify an order for support in accordance with the Idaho child support guidelines at the request of an obligor, obligee or state agency providing services under title IV-D of the social security act;

(d) Petition to enforce an order for support of a child or a spouse or former spouse who is living with a child for whom the individual also owes support; and

(e) Intervene in a divorce or separate maintenance action or proceedings supplemental thereto, for the purpose of advising the court regarding support of a child or advising the court as to the financial interest of the state of Idaho therein without necessity of further leave of the court.

(f) Other services as required by title IV-D of the social security act.

(2) The department of health and welfare is not authorized to provide services regarding visitation or custody of a child unless so authorized by title IV-D of the social security act.

(3) In any action taken under this section, the prevailing party may, at the discretion of the court, be allowed reasonable attorney's fees and costs to be set by the court.

History.

I.C., § 56-203C, as added by 1975, ch. 264, § 4, p. 712; am. 1979, ch. 201, § 1, p. 581; am.

1986, ch. 222, § 3, p. 593; am. 1990, ch. 361, § 6, p. 973; am. 1996, ch. 221, § 1, p. 725; am. 1997, ch. 195, § 2, p. 195.

STATUTORY NOTES

Cross References.

Attorney general, § 67-1401 et seq.

ferred to in this section, is compiled as 42 U.S.C.S. §§ 651 to 667.

Federal References.

Title IV-D of the Social Security Act, re-

JUDICIAL DECISIONS

ANALYSIS

Intervention.

Representation by attorney general.

Intervention.

Idaho R. Civ. P. 24(a), this section, and §§ 56-203A, 56-203B, and 7-1110 constituted a proper statutory basis for the state to intervene as a matter of right in the paternity action against defendant by mother of child seeking paternity declaration and past and future child support payments; magistrate did not err in granting state's motion to intervene. *Henderson v. Smith*, 128 Idaho 444, 915 P.2d 6 (1996).

Representation by Attorney General.

The attorney general may represent private interests in conjunction with state departments, agencies and commissions. *Selkirk Seed Co. v. Forney*, 134 Idaho 98, 996 P.2d 798 (2000).

Cited in: State Dep't of Health & Welfare ex rel. *Gage v. Engelbert*, 114 Idaho 89, 753 P.2d 825 (1988).

56-203D. Set-off procedure for child support debt. — (1) The state tax commission shall withhold and set-off any income tax or tax credit refund of any taxpayer upon notification from the department of health and welfare to collect any unpaid child support, including a judgment for

reimbursement of public assistance, or unpaid spousal support. The state tax commission shall also withhold and set-off any income tax or tax credit refund of any taxpayer upon notification from the department of health and welfare to collect any payment received from a third party for the costs of health services to a child by a person who is required by court or administrative order to provide the costs of health services to a child and such payment has not been used to reimburse either the other parent or guardian of such child, the provider of such services, or the state agency, to the extent necessary to reimburse the other parent, guardian, provider or state agency for such costs. Any claims for current or past-due child support shall take priority over any such claims for the costs of such health services. The set-off or withholding of a refund due a taxpayer shall be completed only after the following conditions have been met:

(a) A delinquency exists, which shall be defined as any unpaid child or spousal support including public assistance, pursuant to a court order from this state or a court or administrative order of another state.

(b) All outstanding tax liabilities collectible by the state tax commission are satisfied.

(c) The department of health and welfare, bureau of child support enforcement, shall forward to the state tax commission the full name and social security number of the taxpayer. The tax commission shall notify the department of health and welfare of the amount of refund due the taxpayer and the taxpayer's address on the income tax return.

(d) Notice of the proposed set-off shall be sent by registered or certified mail to the taxpayer at the address listed on the income tax return. Within fourteen (14) days after such notice has been mailed (not counting Saturday, Sunday or state holidays as the 14th day) the taxpayer may file a protest in writing requesting a hearing before the department of health and welfare. The hearing shall be held within thirty-five (35) days from the date of the mailing of the original notice. No issues at that hearing may be considered that have been litigated previously. The department of health and welfare shall issue its findings and decision either at the hearing or by mail to the taxpayer within ten (10) days of the hearing.

(e) When set-off is attempted on a joint return under the provisions of this section the taxpayer not specified to be the obligor in the claim may protest under the provisions of subsection (1)(d) of this section, and the set-off will be limited to one-half (1/2) of the joint refund.

(f) After the decision of the department of health and welfare is issued, or if the taxpayer has failed to file a timely protest of the claim, the set-off procedure shall become final.

(2) The proceeds from the set-off shall be credited to an account designated by the department of health and welfare, and notice shall be given to the appropriate clerk of the district court.

(3) This procedure for set-off shall not be subject to section 67-1021 [67-1026], Idaho Code.

(4) Any information furnished by the state tax commission, its employees or agents, under this section shall not be subject to the restrictions and penalties enumerated in section 63-3076, Idaho Code.

(5) Upon request, the department of health and welfare, bureau of child support enforcement, shall make the procedures established in this section for collecting child support arrears available to county prosecuting attorneys. The provisions of this subsection apply only if appropriate arrangements have been made for reimbursement by the requesting prosecuting attorney for the administrative costs incurred by the bureau which are attributable to the request.

History.

I.C., § 56-203D, as added by 1981, ch. 167, § 1, p. 292; am. 1985, ch. 159, § 2, p. 312; am. 1990, ch. 91, § 1, p. 191; am. 1994, ch. 308, § 8, p. 963.

STATUTORY NOTES**Cross References.**

State tax commission, § 63-101 et seq.

The words enclosed in parentheses so appeared in the law as enacted.

Compiler's Notes.

The bracketed insertion in subsection (3) was added by the compiler to reflect the renumbering of former § 67-1021 as present § 67-1026 by S.L. 1994, ch. 181, § 20, effective January 2, 1995.

Effective Dates.

Section 2 of S.L. 1981, ch. 167 declared an emergency. Approved March 30, 1981.

Section 11 of S.L. 1994, ch. 308 declared an emergency. Approved March 31, 1994.

JUDICIAL DECISIONS**Construction.**

This section dictates the behavior of the state tax commission, not the federal internal

revenue service. *Oatman v. Secretary of Treas. of United States*, 814 F. Supp. 912 (D. Idaho 1993).

56-203E. Lottery prize set-off procedure for support debt. —

(1) The Idaho state lottery shall withhold and set-off a prize of a lottery prize winner upon notification from the department of health and welfare to collect a support delinquency. The set-off or withholding of a prize shall be completed only after the following conditions have been met:

(a) A delinquency exists, which shall be defined as any unpaid child or spousal support including public assistance, pursuant to a court order from this state or a court or administrative order of another state.

(b) The department of health and welfare, bureau of child support enforcement, shall forward to the Idaho state lottery the full name and social security number of the obligor and the amount of the delinquent child support. The Idaho state lottery shall notify the department of health and welfare of the amount of the prize withheld to satisfy the child support delinquency and the prize winner's address.

(c) Notice of the proposed set-off shall be sent by registered or certified mail to the prize winner at the address provided to the Idaho state lottery. Within fourteen (14) days after such notice has been mailed (not counting Saturday, Sunday or state holidays as the 14th day) the prize winner may file a protest in writing requesting a hearing before the department of health and welfare. The hearing shall be held within thirty-five (35) days from the date of the mailing of the original notice. No issues at that hearing may be considered that have been litigated previously. The department of health and welfare shall issue its findings and decision

either at the hearing or by mail to the prize winner within ten (10) days of the hearing.

(d) After the decision of the department of health and welfare is issued, or if the prize winner has failed to file a timely protest of the claim, the set-off procedure shall become final.

(2) The proceeds from the set-off shall be credited to an account designated by the department of health and welfare, and notice shall be given to the appropriate clerk of the district court.

History.

I.C., § 56-203E, as added by 1990, ch. 153,
§ 2, p. 338.

STATUTORY NOTES

Cross References.

Idaho state lottery, § 67-7401 et seq.

Compiler's Notes.

The words enclosed in parentheses so appeared in the law as enacted.

56-203F. [Amended and Redesignated.]

STATUTORY NOTES

Compiler's Notes.

Former § 56-203F was amended and reded-

esignated as § 32-1601 by S.L. 2004, ch. 213,
§ 1, effective July 1, 2004.

56-204. Personnel. [Repealed.]

STATUTORY NOTES

Compiler's Notes.

This section, which comprised 1941, ch.

181, § 4, p. 379, was repealed by S.L. 1974,
ch. 23, § 1, p. 633.

56-204A. Services for children. — The state department is hereby authorized and directed to maintain, by the adoption of appropriate rules and regulations, activities which, through social casework and the use of other appropriate and available resources, shall embrace:

(a) Protective services on behalf of children whose opportunities for normal physical, social and emotional growth and development are endangered for any reason;

(b) Services for unmarried parents, which may be necessary to assure or provide adequate care, and to safeguard the rights and promote the well-being of such parents and their infants;

(c) Services on behalf of children in their own homes to help overcome problems that may result in dependency, neglect or delinquency, and to strengthen parental care and supervision; and

(d) Undertaking care of, and planning for children including those committed to the state department by the courts.

Such rules and regulations shall provide for:

- (1) Receiving from any source and investigating all reasonable reports or complaints of neglect, abuse, exploitation or cruel treatment of children;
- (2) Initiation of appropriate services and action where indicated with parents or other persons for the protection of children exposed to neglect, abuse, exploitation or cruel treatment;
- (3) Filing pleadings with appropriate courts in cases requiring court action;
- (4) Arrangements for prenatal care of unmarried expectant mothers and payment for such care when necessary for the well-being of the parents and infant;
- (5) Counseling with unmarried parents in relation to their plans for their children, including assisting parents to reach a decision concerning relinquishment through an understanding of what would be best for the child and themselves;
- (6) Services and assistance for minor unmarried parents;
- (7) Services on behalf of children in their own homes to strengthen parental care and supervision;
- (8) Specifying the conditions under which payment shall be made for the purchase of services and care for children, such as medical, psychiatric or psychological services and foster family or institutional care, group care, homemaker service, or day care;
- (9) Procedures to be observed in planning and caring for or placing for adoption a child committed to the state department following the termination of his parent-child relationship;
- (10) The establishment of appropriate administrative procedures for the conduct of administrative reviews and hearings as required by federal statute for all children committed to the department and placed in out of home care.

History.

I.C., § 56-204A, as added by 1963, ch. 325, § 2, p. 936; am. 1989, ch. 217, § 1, p. 525; am.

1989, ch. 218, § 6, p. 527; am. 1992, ch. 341, § 5, p. 1031.

STATUTORY NOTES

Cross References.

Adoption, § 16-1501 et seq.
 Indians, state jurisdiction, § 67-5101.
 Interstate Compact on Juveniles, § 16-1901.

Parent and child relationship, voluntary and involuntary severance, § 16-2001 et seq.
 Juvenile Corrections Act, § 20-501 et seq.

OPINIONS OF ATTORNEY GENERAL

The department of health and welfare has the authority to investigate reports of suspected child abuse, abandonment and neglect; such authority to investigate extends to school facilities; such investigation should proceed in accordance with governing statutes, the department's promulgated rules, and internal policies. OAG 93-2.

The standard for state intervention for the medical treatment of children is that inter-

vention is authorized when children are threatened by, or are in, actual harm; the rules of the department of health and welfare regarding the handling of child abuse, neglect and abandonment are neutral toward religious beliefs; the investigation of child abuse and neglect will proceed and determination of neglect will be made based upon the threat of harm to the child, not upon the religious beliefs of the parents. OAG 93-9.

RESEARCH REFERENCES

C.J.S. — 81 C.J.S., Social Security and Public Welfare, §§ 206 to 208.

A.L.R. — Right of putative father to custody of illegitimate child. 45 A.L.R.3d 216.

Validity and application of statute allowing endangered child to be temporarily removed from parental custody. 38 A.L.R.4th 756.

56-204B. Temporary shelter care. — The state department shall provide places of shelter as authorized by law for the placement of children for temporary care who have been brought into the custody of the magistrate courts or who have been taken into custody for their protection by peace officers. Such places of shelter may be maintained by the state department or may be licensed foster family homes or licensed foster institutional facilities employed or retained for shelter care by the state department.

History.

I.C., § 56-204B, as added by 1963, ch. 325,

§ 3, p. 936; am. 1974, ch. 233, § 2, p. 1590; am. 2001, ch. 107, § 20, p. 350.

STATUTORY NOTES

Cross References.

Child-Care Licensing Reform Act, § 39-1201 et seq.

Juvenile Corrections Act, § 20-501 et seq.

Effective Dates.

Section 4 of S.L. 1963, ch. 325 provided that the act should take effect from and after September 1, 1963.

56-205. Eligibility for public assistance. [Repealed.]

STATUTORY NOTES

Compiler's Notes.

This section, which comprised 1941, ch. 181, § 5, p. 379; am. 1974, ch. 233, § 3, p.

1590, was repealed by S.L. 1996, ch. 50, § 3, effective July 1, 1996.

56-206. General assistance. — Public assistance awarded under the terms of this act which is not classified as old-age assistance, or aid to the blind, or assistance to families with children, or aid to the disabled, or medical assistance, shall be designated as general assistance.

History.

1941, ch. 181, § 6, p. 379; am. 1966 (2nd

E.S.), ch. 11, § 3, p. 28; am. 1996, ch. 50, § 4, p. 147.

STATUTORY NOTES

Compiler's Notes.

The term "this act" refers to S.L. 1941, ch. 181, which is compiled as §§ 56-201 to 56-203, 56-206 to 56-208, 56-210, 56-211 to 56-

214, 56-215 to 56-217, 56-219 to 56-224, 56-227, and 56-228 to 56-230. The reference probably should be to "this chapter," being chapter 2, title 56, Idaho Code.

56-207. Old-age assistance. — Old-age assistance shall be awarded to needy people who have attained the age of sixty-five (65) years, are residents of the state, and who are not inmates of public institutions at the time of receiving assistance except as patients in public medical institutions and who are not patients in any institution for tuberculosis or for mental

diseases or who are not patients in any medical institution as a result of having been diagnosed as having tuberculosis or psychosis.

History.

1941, ch. 181, § 7, p. 379; am. 1951, ch. 246,
§ 1, p. 520; am. 1974, ch. 233, § 4, p. 1590.

JUDICIAL DECISIONS**ANALYSIS**

Constitutionality.

Promotion of public welfare.

Constitutionality.

Public assistance law does not violate Idaho Const., Art. VIII, § 2 prohibiting giving of aid by the state to an individual, since it is the function of the state to grant aid to the needy. *Newland v. Child*, 73 Idaho 530, 254 P.2d 1066 (1953).

Promotion of Public Welfare.

The granting of aid to its needy aged is a well recognized obligation of the state and is a governmental function tending to promote the public welfare. *State ex rel. Nielson v. Lindstrom*, 68 Idaho 226, 191 P.2d 1009 (1948).

56-208. Aid to the blind. — Aid to the blind shall be awarded to needy people who have no vision, or whose vision is so defective as to prevent the performance of ordinary activities for which eyesight is essential, who are not receiving old-age assistance, and who are not inmates of public institutions at the time of receiving assistance.

History.

1941, ch. 181, § 8, p. 379; am. 1974, ch. 233,
§ 5, p. 1590.

STATUTORY NOTES**Cross References.**

Rights of blind and physically handicapped,
§ 56-701 et seq.

Compiler's Notes.

Section 3 (§ 67-5403) of S.L. 1967, ch. 373

provided that on October 1, 1967, all powers and duties of the department of public assistance relating to services to the blind and sight conservation are transferred to and shall be assumed by the commission for the blind [and visually impaired].

RESEARCH REFERENCES

C.J.S. — 81 C.J.S., Social Security and Public Welfare, §§ 193 to 198.

56-209. Assistance to families with children. — The director of the department is authorized to promulgate rules establishing assistance programs for eligible families, including temporary cash assistance, which will promote personal responsibility and self-sufficiency. The department shall define eligibility and other requirements of participation, and may establish time limitations, in conformity with federal law and regulation. The amount and duration of assistance shall be based on available funding.

History.

I.C., § 56-209, as added by 1996, ch. 50, § 6, p. 147.

STATUTORY NOTES

Prior Laws.

Former § 56-209, which comprised I.C., § 56-209, as added by 1978, ch. 289, § 2, p. 707; am. 1981, ch. 104, § 1, p. 157; am. 1990, ch. 49, § 1, p. 120, was repealed by S.L. 1996, ch. 50, § 5.

Another former § 56-209, which comprised S.L. 1941, ch. 181, § 9, p. 379; am. 1974, ch. 233, § 6, p. 1590; am. 1978, ch. 246, § 2, was repealed by S.L. 1978, ch. 289, § 1.

JUDICIAL DECISIONS

DECISIONS UNDER PRIOR LAW

ANALYSIS

Authority to regulate.

Determining need.

In general.

Income.

Authority to Regulate.

The state department of health and welfare has been delegated the power to define dependent children and this power would seem to include the authority to promulgate regulations concerning how eligibility is determined and reevaluated over time. *Tappen v. State, Dep't of Health & Welfare*, 102 Idaho 807, 641 P.2d 994 (1982).

While the department has considerable latitude in regulating its aid to families with dependent children (AFDC) program, it is still required to conform with all applicable terms of the federal AFDC program. *Tappen v. State, Dep't of Health & Welfare*, 102 Idaho 807, 641 P.2d 994 (1982).

Determining Need.

A basic principle of both the state and federal regulation of the aid to families with dependent children program requires that, in determining need, deprivation, dependency and ultimate eligibility for public assistance, all currently and actually available income and resources of a recipient be considered. *Tappen v. State, Dep't of Health & Welfare*, 102 Idaho 807, 641 P.2d 994 (1982).

In General.

A department of health and welfare regulation defining eligibility for aid to dependent

children did not violate the legislative mandate of this section. *Tappen v. State, Dep't of Health & Welfare*, 98 Idaho 576, 570 P.2d 28 (1977).

Income.

The language of regulations used by the department of health and welfare to determine allowable costs to be deducted from gross income, in establishing eligibility for assistance, does not limit the allowable deductions to those items listed; the terms "include" and "such as" are not restrictive terms which exclude other appropriate costs from also being deductible. *Posey v. State, Dep't of Health & Welfare*, 114 Idaho 449, 757 P.2d 712 (Ct. App. 1988).

Chapter 13 payments to a trustee in bankruptcy were not allowable business deductions from gross income, in determining a farmer's eligibility for aid to families of dependent children, food stamps and medical assistance under the regulations of the department of health and welfare, as the payments did not relate to current income production and had not been shown to be for debts originally incurred as business costs. *Posey v. State, Dep't of Health & Welfare*, 114 Idaho 449, 757 P.2d 712 (Ct. App. 1988).

56-209a. Aid to the disabled. — Aid to the disabled shall be awarded to needy persons who are disabled and whose disability prevents self-support through employment for a period of at least one (1) year from the date of onset of the disability, but who are not inmates of public institutions (except as patients in medical institutions) and who are not patients in an institution for tuberculosis or mental diseases or who are not patients in any

medical institution as a result of having been diagnosed as having tuberculosis or psychosis.

History.

I.C., § 56-209a, as added by 1961, ch. 217, § 3, p. 346; am. 1974, ch. 233, § 7, p. 1590; am. 1978, ch. 246, § 3, p. 537.

STATUTORY NOTES**Compiler's Notes.**

The words enclosed in parentheses so appeared in the law as enacted.

56-209b. Medical assistance — Medical assistance account. —

(1) Medical assistance shall be awarded to persons as mandated by federal law; and medical assistance may be awarded to such other persons not required to be awarded medical assistance as mandated by federal law when such award is to the fiscal advantage of the state of Idaho.

(2) There is hereby created in the dedicated fund the medical assistance account. The medical assistance account shall be an entity primarily designed to receive moneys from the families and relatives of patients receiving medical assistance under the state plan for medicaid, and to provide a source of moneys to pay for the state's share of medical assistance expenses. Moneys in the medical assistance account may not be commingled with moneys in the cooperative welfare account [fund]. Moneys in the medical assistance account must be appropriated in order to be expended to pay for the state's share of medical assistance expenses.

(3) In all cases where the department of health and welfare through the medical assistance program has or will be required to pay medical expenses for a recipient and that recipient is entitled to recover any or all such medical expenses from any third party or entity, the department of health and welfare will be subrogated to the rights of the recipient to the extent of the amount of medical assistance benefits paid by the department as the result of the occurrence giving rise to the claim against the third party or entity.

(4) If a recipient of medical assistance pursues a claim against a third party or entity through litigation or a settlement, the recipient will so notify the department. If a recipient fails to notify the department of such claim, the department may recover the amount of any public assistance obtained by the recipient while the recipient pursued such claim. In addition, if the recipient recovers funds, either by settlement or judgment, from such a third party or entity, the recipient shall reimburse the department to the extent of the funds received in settlement minus attorney's fees and costs, the amount of the medical assistance benefits paid by the department on his behalf as a result of the occurrence giving rise to the need for medical assistance. The department shall be entitled to all the legal rights and powers of a creditor against a debtor in enforcing the recipient's reimbursement obligation.

(5) The department shall have priority to any amount received from a third party or entity which can reasonably be construed to compensate the recipient for the occurrence giving rise to the need for medical assistance,

whether the settlement or judgment is obtained through the subrogation right of the department or through recovery by the recipient, and whether or not the recipient is made whole by the amount recovered. The department will be entitled to reimbursement of medical assistance benefits paid on behalf of the recipient arising from the incident or occurrence prior to any amount being distributed to the recipient. The department may notify such third party or entity of the department's entitlement to receive the reimbursement prior to any amount being distributed to the recipient. Furthermore, the department may instruct the third party or entity to make such payment directly to the department prior to any amount being distributed to the recipient. Any third party or entity who distributed funds in violation of such a notice shall be liable to the department for the amount of the reimbursement.

(6) In the event a recipient of assistance through the medical assistance program incurs the obligation to pay attorney's fees and costs for the purpose of enforcing a monetary claim to which the department has a right under this section, the amount which the department is entitled to recover, or any lesser amount which the department may agree to accept in compromise of its claim, shall be reduced by an amount which bears the same relation to the total amount of attorney's fees and costs actually paid by the recipient as the amount actually recovered for medical expenses paid by the department, exclusive of the reduction for attorney's fees and costs, bears to the total amount paid by the third party or entity to the recipient. If a settlement or judgment is received by the recipient without delineating what portion of the settlement or judgment is in payment of medical expenses, it will be presumed that the settlement or judgment applies first to the medical expenses incurred by the recipient in an amount equal to the expenditure for medical assistance benefits paid by the department as a result of the occurrence giving rise to the payment or payments to the recipient.

History.

I.C., § 56-209b, as added by 1961, ch. 217, § 3, p. 346; am. 1966 (2nd E.S.), ch. 11, § 4, p. 28; am. 1973, ch. 161, § 2, p. 306; am. 1978,

ch. 246, § 4, p. 537; am. 1981, ch. 201, § 1, p. 354; am. 1982, ch. 180, § 1, p. 468; am. 1996, ch. 196, § 1, p. 614; am. 2002, ch. 369, § 1, p. 1038.

STATUTORY NOTES

Compiler's Notes.

The bracketed insertion in subsection (2) was added by the compiler to correct the name of the referenced fund.

Section 2 of S.L. 1996, ch. 196 read: "The provisions of this act are hereby declared to be severable and if any provision of this act or the application of such provision to any person or circumstance is declared invalid for any reason, such declaration shall not affect the validity of the remaining portion of this act."

Effective Dates.

Section 6 of S.L. 1966 (2nd E.S.), ch. 11 provided that the act should take effect on and after July 1, 1966.

Section 3 of S.L. 1973, ch. 161 declared an emergency. Approved March 17, 1973.

Section 5 of Acts 1981, ch. 201 declared an emergency and provided that the act should be in full force and effect retroactive to January 1, 1981. Approved April 1, 1981.

Section 2 of S.L. 1982, ch. 180 declared an emergency. Approved March 23, 1982.

JUDICIAL DECISIONS

ANALYSIS

Application.

Cost of recovery by state.

Effect of 1973 amendment.

Medically needy individuals.

Presumption of subsection (6).

Application.

Subsection (4) is unambiguous and describes the precise circumstances that occurred in this case. Following the jury's award, but before final judgment was entered, the plaintiff entered into a settlement agreement with the manufacturer of the component part which caused the accident. The settlement agreement did not specify what portion of the settlement was in payment of the medical expenses, and, as this circumstance falls directly within the dictates of subsection (4), the statute specifically and unambiguously requires that the settlement be applied first to Medicaid payments in an amount equal to the expenditures for medical assistance benefits paid by the department. Therefore the plaintiff was required to fully reimburse the department of health and welfare for the medical benefits paid for his benefit minus the department's pro rata share of attorney fees and costs. *Davis v. Idaho Dep't of Health & Welfare*, 130 Idaho 469, 943 P.2d 59 (Ct. App. 1997).

Cost of Recovery by State.

In order to be eligible to receive Medicaid, an applicant must assign to the department his right to recover payment from any third party up to the amount of medical assistance paid, and this section sets out procedures designed to protect the state's interests in cost recovery. *State Dep't of Health & Welfare v. Hudelson* (In re Hudelson), 146 Idaho 439, 196 P.3d 905 (2008), overruled on other grounds, *Verska v. St. Alphonsus Med. Ctr.*, 151 Idaho 889, 265 P.3d 502 (2011).

Effect of 1973 Amendment.

The 1973 amendments to this section re-adopted a "categorically needy" program in Idaho and terminated the "medically needy" program; thus when the plaintiffs' old age assistance grant was terminated June 30,

1976, because they no longer had a budget deficit they no longer qualified for medical assistance. *Hayman v. State, Dep't of Health & Welfare*, 100 Idaho 710, 604 P.2d 724 (1979).

Medically Needy Individuals.

Under this section, Medicaid benefits under Idaho's medical assistance plan are required for "medically needy individuals" as well as the other categories of persons listed in the section. *Curtis v. Child*, 95 Idaho 63, 501 P.2d 1374 (1972) (decision prior to 1973 amendment deleting reference to "medically needy individuals").

Presumption of Subsection (6).

The presumption of subsection (6) of this section is applicable unless a judge or jury awards a specific amount of compensation for medical expenses or an allocation is agreed upon by all interested parties, including the department of health and welfare. *State Dep't of Health & Welfare v. Hudelson* (In re Hudelson), 146 Idaho 439, 196 P.3d 905 (2008), overruled on other grounds, *Verska v. St. Alphonsus Med. Ctr.*, 151 Idaho 889, 265 P.3d 502 (2011).

Department of health & welfare was not entitled to the benefit of the presumption in subsection (6) that a Medicaid recipient's third-party settlement should apply first to benefits paid by the department. However, the department was entitled to recover the full amount it expended against the amounts allocated in the settlement to future medical expenses and to other past medical expenses paid, pursuant to subsection (5). *Idaho Dep't of Health & Welfare v. Matey* (In re Matey), 147 Idaho 604, 213 P.3d 389 (2009).

Cited in: *Madsen v. State, Dep't of Health & Welfare*, 114 Idaho 182, 755 P.2d 479 (Ct. App. 1988).

RESEARCH REFERENCES

C.J.S. — 81 C.J.S., Social Security and Public Welfare, § 231 et seq.

A.L.R. — Right to disability benefits as affected by refusal to submit to, or cooperate in, medical or surgical treatment. 11 A.L.R.3d 1134.

Hill-Burton Act: right to maintain action under Hill-Burton Act (42 USC §§ 291 et seq.) to compel hospital to provide services to persons unable to pay therefor. 11 A.L.R. Fed. 683.

56-209c. Denial of payment for abortions under certain conditions. — No funds available to the department of health and welfare, by appropriation or otherwise, shall be used to pay for abortions, unless it is the recommendation of one (1) consulting physician that an abortion is necessary to save the life of the mother, or unless the pregnancy is a result of rape, as defined in section 18-6101, Idaho Code, or incest as determined by the courts.

History.

I.C., § 56-209c, as added by 1977, ch. 321, § 1, p. 898; am. 2001, ch. 273, § 3, p. 996; am. 2011, ch. 152, § 2, p. 436.

STATUTORY NOTES**Amendments.**

The 2011 amendment, by ch. 152, substituted “one (1)” for “two (2)” and inserted “as defined in section 18-6101, Idaho Code.”

“Severability. The provisions of this act are hereby declared to be severable and if any provision of this act or the application of such provision to any person or circumstance is declared invalid for any reason, such declaration shall not affect the validity of the remaining portions of this act.”

Compiler's Notes.

Section 3 of S.L. 2011, ch. 152 provided:

JUDICIAL DECISIONS

Cited in: *Roe v. Harris*, 128 Idaho 569, 917 P.2d 403 (1996).

RESEARCH REFERENCES

A.L.R. — Validity of state statutes and funding for abortions sought by indigent regulations limiting or restricting public women. 118 A.L.R.5th 463.

56-209d. Medical assistance program — Services to be provided — Experimental services or procedures excluded. — Notwithstanding any other provision of this chapter, medical assistance shall increase:

(1) Payment as determined under rules established by the director from forty (40) days per fiscal year to unlimited days of inpatient hospital care per state fiscal year.

(2) Payment as determined under rules established by the director from thirty dollars (\$30.00) per month to an unlimited amount of prescribed drugs for each recipient.

(3) Provision of eligibility for medical assistance for residents of skilled and intermediate care facilities who meet the medical criteria for medical assistance, from those with countable income of two hundred one and two-tenths percent (201.2%) to those with countable income of three hundred percent (300%) of the SSI standard.

(4) Payment, as authorized by title XIX of the social security act, as amended, and as determined under rules established by the director for:

- (a) Durable medical equipment.
- (b) Soft organ transplants.
- (c) Adult dental services.
- (d) Adult vision services.
- (e) Adult hearing services.

(f) Prosthetics.

(g) Assistive and augmentative communication devices.

(5) Payment for breast and cervical cancer-related treatment services for persons who are eligible for screening for these cancers under the federal centers for disease control and prevention's national breast and cervical cancer early detection program, and are eligible for medical assistance pursuant to the provisions of the federal "Breast and Cervical Cancer Prevention and Treatment Act of 2000" (Pub. L. 106-354).

(6) The cost of physician, hospital or other services deemed experimental are excluded from coverage. The director may allow coverage of procedures or services deemed investigational if the procedures or services are as cost effective as traditional, standard treatments.

History.

I.C., § 56-209d, as added by 1987, ch. 170, § 2, p. 334; am. 1991, ch. 233, §§ 15 and 18,

p. 553; am. 1995, ch. 41, § 1, p. 62; am. 1999, ch. 132, § 1, p. 378; am. 2001, ch. 205, § 1, p. 698; am. by 2005, ch. 294, § 1, p. 933.

STATUTORY NOTES

Federal References.

Title XIX of the social security act, referred to in subsection (4), is codified as 42 U.S.C.S. § 1396 et seq.

The federal "Breast and Cervical Cancer Prevention and Treatment Act of 2000" (Public Law 106-354), referred to in subsection (5), is codified as 42 U.S.C.S. § 1396a and 42 U.S.C.S. § 1396r-1b.

Compiler's Notes.

For more on SSI standards, as referenced in subsection (3), see <http://www.socialsecurity.gov/OACT/COLA/SSlamts.html>.

The reference enclosed in parentheses so appeared in the law as enacted.

Effective Dates.

Section 19 (2) of S.L. 1991, ch. 233 provided that § 15 should be in full force and effect on and after October 1, 1991. Chapter 233 became law without the governor's signature.

Section 19 (3) of S.L. 1991, ch. 233 provided that § 18 should be in full force and effect on or after October 1, 1993. Chapter 233, S.L. 1991 became law without the governor's signature.

Section 2 of S.L. 1995, ch. 41 declared an emergency. Approved February 28, 1995.

Section 2 of S.L. 2005, ch. 294 provides that the act shall be in full force and effect on and after July 1, 2006.

56-209e. Eligibility of married couples for medical assistance under the medicaid program. — (1) It is the intent of the legislature in enacting this section to reduce the number of situations in which medicaid regulations as they apply to long term care costs, cause either the destitution of the entire family, or a dissolution of marriage carried out to prevent destitution. It is further the intent of this section to protect the community and separate property rights, insofar as such rights are not specifically preempted by federal law, of a married person whose spouse applies for medical assistance regardless of whether they are living together.

(2)(a) In determining the eligibility of an aged, blind or disabled married individual or of a couple for medical assistance under title XIX of the social security act, the amount of income and resources to be counted as available to such individual or couple shall be calculated in accordance with the community property provisions of chapter 9, title 32, Idaho Code, or should it be to the advantage of such individual or couple, in accordance with the methods utilized by the federal supplemental security income program under title XVI of the social security act.

(b) Where both spouses are applying or are covered by medical assis-

tance, the same method of counting income and resources shall be applied to both spouses and utilized to determine the liability of each for the cost of medical care; however, for any month for which either spouse receives a supplemental security income payment or a state supplement under section 56-207, 56-208 or 56-209a, Idaho Code, or for which an application is filed and subsequently approved, the methodology of the supplemental security income program shall be applied.

(c) The presumption of the availability of income under either the community property or supplemental security income method may be rebutted by either spouse.

(d) The department of health and welfare shall furnish to each married medical assistance applicant who is aged, blind or disabled, a clear and simple statement in writing advising them of the provisions of this section.

(e)(i) The provisions of paragraphs (a) through (d) of this subsection shall continue to apply on and after September 30, 1989, to married couples who are living together.

(ii) Beginning September 30, 1989, eligibility for any married person living in a medical institution whose spouse does not live in a medical institution, shall be determined by evaluating income first by attributing such income to the individual or individuals in whose name or names such income is paid, and if such attribution exceeds the maximum eligibility limit, secondly by attributing income in accordance with the community property provisions of chapter 9, title 32, Idaho Code.

(iii) Beginning September 30, 1989, the post eligibility treatment of income of any married person living in a medical institution whose spouse does not live in a medical institution, shall be in accordance with section 1924(b) and (d) of the social security act regardless of whether eligibility was determined in accordance with the name or names by which income was paid or in accordance with the community property provisions of chapter 9, title 32, Idaho Code.

(iv) The provisions of paragraphs (a), (b) and (d) of this subsection as they relate to resources shall continue to apply on and after September 30, 1989, to couples separated because one (1) spouse entered a medical institution for a continuous stay on or before September 29, 1989; and the provisions of section 1924(c) of the social security act shall apply to couples separated because one (1) spouse enters a medical institution for a continuous stay on or after September 30, 1989.

(3) If any provision of this section or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the section that can be given effect without the invalid provisions or applications, and to this end the provisions of this section are severable.

History.

I.C., § 56-209e, as added by 1988, ch. 50,
§ 1, p. 74; am. 1989, ch. 67, § 1, p. 107.

STATUTORY NOTES

Federal References.

Title XVI and title XIX of the social security act, referred to in subdivision (2)(a), are compiled as 42 U.S.C.S. § 1381 et seq. and 42 U.S.C.S. § 1396 et seq., respectively.

Section 1924 of the social security act, referred to in subdivision (2)(d), is codified as 42 USCS § 1396r.

56-209f. State financial assistance program for medically indigent residents. — Beginning October 1, 1991, subject to the requirements and limitations of chapter 35, title 31, Idaho Code, the state shall fund the catastrophic health care cost program from the catastrophic health care cost account which shall provide financial assistance to medically indigent residents who are not eligible under the state plan for medicaid under title XIX of the social security act or medicare under title XVIII of that act, as amended.

History.

I.C., § 56-209f, as added by 1990, ch. 87,

§ 11, p. 177; am. 1991, ch. 233, § 16, p. 553; am. 2011, ch. 291, § 27, p. 794.

STATUTORY NOTES

Cross References.

Catastrophic health care cost account, § 57-813.

compiled as so amended by § 16 of S.L. 1991, ch. 233.

Amendments.

The 2011 amendment, by ch. 291, rewrote the section heading which formerly read: "State medical assistance program", inserted "subject to the requirements and limitations of chapter 35, title 31, Idaho Code" near the beginning of the section, inserted "financial" preceding "assistance", and substituted "indigent residents" for "indigent persons."

Effective Dates.

Section 19 of S.L. 1991, ch. 233 read: "(1) An emergency existing therefore, which emergency is hereby declared to exist, Section 1 of this act shall be in full force and effect on and after passage and approval.

"(2) Sections 2 through 17 of this act shall be in full force and effect on and after October 1, 1991.

"(3) Section 18 of this act shall be in full force and effect on and after July 1, 1992.

"(4) On October 1, 1991, all moneys contributed by counties to the catastrophic health care cost account as of the close of business on September 30, 1991, shall be separately identified and set aside, and shall be used by the administrator to fund medical costs of participating counties which occurred prior to October 1, 1991, until all claims are paid or until such moneys are exhausted. Any fund balance remaining after the proper payment of claims incurred prior to October 1, 1991, shall be apportioned back to the county of origin. If no fund balance exists, but outstanding claims exist that were incurred prior to October 1, 1991, such claims shall be paid as provided in subsection (5) of this section.

"(5) All claims incurred on or after October 1, 1991, shall be paid from the catastrophic health care cost account funded from state appropriations to the account." Became law without the governor's signature.

Federal References.

Title XIX of the social security act is codified as 42 USCS § 1396 et seq.

Title XVIII of the social security act is codified as 42 USCS § 1395 et seq.

Compiler's Notes.

Section 56-209f was enacted by § 11 of S.L. 1990, ch. 87, effective October 1, 1991. However, ch. 87 was repealed by § 1 of S.L. 1991, ch. 233 and § 19 (1) of said ch. 233 declared an emergency and provided that such repeal should take effect upon passage and approval. Chapter 233 of S.L. 1991 became law without the governor's signature. Therefore, the enactment by S.L. 1990, ch. 87 never took effect.

However, § 16 of S.L. 1991, ch. 233, purports to amend § 11 of S.L. 1990, ch. 87 by providing "That Section 56-209f, Idaho Code, be, and the same is hereby amended to read as follows:". Thus, Section 56-209f has been

56-209g. Pharmacy reimbursement. — (1) Medicaid pharmacy reimbursement levels are a combination of the cost of the drug and a

dispensing fee which includes such pharmaceutical care services as counseling, obtaining a patient history, documentation and dispensing. Pharmacy reimbursement levels may be adjusted in accordance with rules promulgated by the director through negotiated rulemaking with interested parties including representatives of the pharmacy profession.

(2) The department will pay the lesser of the provider's lowest charge to the general public for a drug or the estimated acquisition cost (EAC) plus a dispensing fee.

(a) The EAC is defined by the department as the average acquisition cost (AAC) of the drug, or when no AAC is available, reimbursement will be wholesale acquisition cost (WAC). WAC shall mean the price, paid by a wholesaler for the drugs purchased from the wholesaler's supplier, typically the manufacturer of the drug as published by a recognized compendia of drug pricing on the last day of the calendar quarter that corresponds to the calendar quarter.

(b) The department shall establish pharmacy dispensing fee payments based on the results of surveys of pharmacies and dispensing rates paid to other payers. The dispensing fee structure will be tiered, with the tiers based on the annual medicaid claims volume of the enrolled Idaho retail pharmacy. All other pharmacy dispensing fees will be the lowest dispensing fee for the tiered structure.

(3) The AAC will be established by the department by state or national surveys to the pharmacy for the product. When surveys are requested by the department to pharmacies participating in the Idaho medicaid program, they are required to participate in these periodic state cost surveys by disclosing the costs of all drugs net of any special discounts or allowances. Participating pharmacies that refuse to respond to the periodic state surveys will be disenrolled as a medicaid provider.

History.

I.C., § 56-209g, as added by 1995, ch. 228, § 1, p. 779; am. 1998, ch. 187, § 1, p. 682; am.

2010, ch. 296, § 5, p. 801; am. 2011, ch. 164, § 8, p. 463.

STATUTORY NOTES

Amendments.

The 2010 amendment, by ch. 296, added the subsection (1) designation and therein deleted the second sentence, which formerly read: "From and after January 1, 1995, through June 30, 1998, it shall be the policy of the state of Idaho that there be no reduction of pharmacy reimbursement levels for medicaid under title XIX of the social security act except as necessary to comply with federal regulations, 42 CFR 447.331 through 447.334, as implemented in the state of Idaho"; and added subsection (2).

The 2011 amendment, by ch. 164, deleted "Effective July 1, 1998" from the beginning of the last sentence in subsection (1); added subsection (2); and redesignated former subsection (2) as subsection (3) and rewrote the subsection, which formerly read: "The depart-

ment will utilize periodic state cost surveys to obtain the most accurate pharmacy drug acquisition costs in establishing a pharmacy reimbursement fee schedule. Pharmacies participating in the Idaho Medicaid program are required to participate in these periodic state cost surveys by disclosing the costs of all drugs net of any special discounts or allowances."

Compiler's Notes.

The abbreviations enclosed in parentheses so appeared in the law as enacted.

Effective Dates.

Section 2 of S.L. 1995, ch. 228 declared an emergency and provided that the act should be in full force and effect on and after its passage and approval and retroactively to January 1, 1995. Approved March 20, 1995.

Section 6 of S.L. 2010, ch. 296 declared an emergency retroactively to April 1, 2010 and approved April 11, 2010.

56-209h. Administrative remedies. — (1) Definitions. For purposes of this section:

(a) “Abuse” or “abusive” means provider practices that are inconsistent with sound fiscal, business, child care or medical practices, and result in an unnecessary cost to a public assistance program, in reimbursement for services that are not medically necessary or that fail to meet professionally recognized standards for health care, or in physical harm, pain or mental anguish to a public assistance recipient.

(b) “Claim” means any request or demand for payment, or document submitted to initiate payment, for items or services provided under a public assistance program, whether under a contract or otherwise.

(c) “Fraud” or “fraudulent” means an intentional deception or misrepresentation made by a person with the knowledge that the deception could result in some unauthorized benefit to himself or some other person.

(d) “Intentional program violation” means intentionally false or misleading action, omission or statement made in order to qualify as a provider or recipient in a public assistance program.

(e) “Knowingly,” “known” or “with knowledge” means that a person, with respect to information or an action:

(i) Has actual knowledge of the information or action; or

(ii) Acts in deliberate ignorance of the truth or falsity of the information or the correctness or incorrectness of the action; or

(iii) Acts in reckless disregard of the truth or falsity of the information or the correctness or incorrectness of the action.

(f) “Managing employee” means a general manager, business manager, administrator, director or other individual who exercises operational or managerial control over, or who directly or indirectly conducts the day-to-day operation of, an institution, organization or agency.

(g) “Medicaid fraud control unit” means that medicaid fraud control unit as provided for in section 56-226, Idaho Code.

(h) “Ownership or control interest” means a person or entity that:

(i) Has an ownership interest totaling twenty-five percent (25%) or more in an entity; or

(ii) Is an officer or director of an entity that is organized as a corporation; or

(iii) Is a partner in an entity that is organized as a partnership; or

(iv) Is a managing member in an entity that is organized as a limited liability company.

(i) “Provider” means an individual, organization, agency or other entity providing items or services under a public assistance program.

(j) “Public assistance program” means assistance for which provision is made in any federal or state law existing or hereafter enacted by the state of Idaho or the congress of the United States by which payments are made from the federal government to the state in aid, or in respect to payment by the state for welfare purposes to any category of needy person, and any

other program of assistance for which provision for federal or state funds for aid may from time to time be made.

(2) The department shall establish and operate an administrative fraud control program to enforce violations of the provisions of this chapter and of the state plan pursuant to subchapters XIX and XXI, chapter 7, title 42, U.S.C., that are outside the scope of the duties of the medicaid fraud control unit and to render and receive referrals from and to said unit.

(3) Review of documentation of services. All claims submitted by providers for payment are subject to prepayment and postpayment review as designated by rule. Except as otherwise provided by rule, providers shall generate documentation at the time of service sufficient to support each claim, and shall retain the documentation for a minimum of five (5) years from the date the item or service was provided. The department or authorized agent shall be given immediate access to such documentation upon written request.

(4) Immediate action. In the event that the department identifies a suspected case of fraud or abuse and the department has reason to believe that payments made during the investigation may be difficult or impractical to recover, the department may suspend or withhold payments to the provider pending investigation. In the event that the department identifies a suspected case of fraud or abuse and it determines that it is necessary to prevent or avoid immediate danger to the public health or safety, the department may summarily suspend a provider agreement pending investigation. When payments have been suspended or withheld or a provider agreement suspended pending investigation, the department shall provide for a hearing within thirty (30) days of receipt of any duly filed notice of appeal.

(5) Recovery of payments. Upon referral of a matter from the medicaid fraud control unit, or if it is determined by the department that any condition of payment contained in rule, regulation, statute, or provider agreement was not met, the department may initiate administrative proceedings to recover any payments made for items or services under any public assistance contract or provider agreement the individual or entity has with the department. Interest shall accrue on overpayments at the statutory rate set forth in section 28-22-104, Idaho Code, from the date of final determination of the amount owed for items or services until the date of recovery.

(6) Provider status. The department may terminate the provider agreement or otherwise deny provider status to any individual or entity who:

(a) Submits a claim with knowledge that the claim is incorrect, including reporting costs as allowable which were known to be disallowed in a previous audit, unless the provider clearly indicates that the item is being claimed to establish the basis for an appeal and each disputed item and amount is specifically identified; or

(b) Submits a fraudulent claim; or

(c) Knowingly makes a false statement or representation of material fact in any document required to be maintained or submitted to the department; or

- (d) Submits a claim for an item or service known to be medically unnecessary; or
- (e) Fails to provide, upon written request by the department, immediate access to documentation required to be maintained; or
- (f) Fails repeatedly or substantially to comply with the rules and regulations governing medical assistance payments or other public assistance program payments; or
- (g) Knowingly violates any material term or condition of its provider agreement; or
- (h) Has failed to repay, or was a “managing employee” or had an “ownership or control interest” in any entity that has failed to repay, any overpayments or claims previously found to have been obtained contrary to statute, rule, regulation or provider agreement; or
- (i) Has been found, or was a “managing employee” in any entity which has been found, to have engaged in fraudulent conduct or abusive conduct in connection with the delivery of health care or public assistance items or services; or
- (j) Fails to meet the qualifications specifically required by rule or by any applicable licensing board.

Any individual or entity denied provider status under this section may be precluded from participating as a provider in any public assistance program for up to five (5) years from the date the department’s action becomes final.

(7) The department must refer all cases of suspected medicaid provider fraud to the medicaid fraud control unit and shall promptly comply with any request from the medicaid fraud control unit for access to and free copies of any records or information kept by the department or its contractors, computerized data stored by the department or its contractors, and any information kept by providers to which the department is authorized access by law.

(8) Civil monetary penalties. The department may also assess civil monetary penalties against a provider and any officer, director, owner, and/or managing employee of a provider for conduct identified in subsections (6)(a) through (6)(i) of this section. The amount of the penalties shall be up to one thousand dollars (\$1,000) for each item or service improperly claimed, except that in the case of multiple penalties the department may reduce the penalties to not less than twenty-five percent (25%) of the amount of each item or service improperly claimed if an amount can be readily determined. Each line item of a claim, or cost on a cost report is considered a separate claim. These penalties are intended to be remedial, recovering at a minimum costs of investigation and administrative review, and placing the costs associated with noncompliance on the offending provider.

(9) Exclusion. Any individual or entity convicted of a criminal offense related to the delivery of an item or service under any state or federal program shall be excluded from program participation as a medicaid provider for a period of not less than ten (10) years. Unless otherwise provided in this section or required by federal law, the department may exclude any individual or entity for a period of not less than one (1) year for

any conduct for which the secretary of the department of health and human services or designee could exclude an individual or entity.

(10) Sanction of individuals or entities. The department may sanction individuals or entities by barring them from public assistance programs for intentional program violations where the federal law allows sanctioning individuals from receiving assistance. Individuals or entities who are determined to have committed an intentional program violation will be sanctioned from receiving public assistance for a period of twelve (12) months for the first violation, twenty-four (24) months for the second violation and permanently for the third violation.

(11) Individuals or entities subject to administrative remedies as described in subsections (4) through (10) of this section shall be provided the opportunity to appeal pursuant to chapter 52, title 67, Idaho Code, and the department's rules for contested cases.

(12) Adoption of rules. The department shall promulgate such rules as are necessary to carry out the policies and purposes of this section.

History.

I.C., § 56-209h, as added by 1998, ch. 311,

§ 2, p. 1030; am. 2007, ch. 341, § 2, p. 1000; am. 2008, ch. 187, § 1, p. 588.

STATUTORY NOTES

Amendments.

The 2007 amendment, by ch. 341, added subsections (1)(f), (2), and (7) and redesignated subsections accordingly; in subsection (3), added "Review of" and deleted "and shall retain the documentation for a minimum of five (5) years from the date the item or service was provided" near the end; in subsection (5), inserted "Upon referral of a matter from the medicaid fraud control unit, or," "by the department," and "initiate administrative proceedings to"; and in subsection (8), inserted "at a minimum" near the end.

The 2008 amendment, by ch. 187, in paragraph (1)(a), inserted "child care" and twice substituted "public assistance program" for "medical assistance program"; in paragraph (1)(b), substituted "or document submitted to initiate payment, for items or services provided under a public assistance program" for "of items or services under the state's medical assistance program"; added paragraph (1)(d) and redesignated the subsequent paragraphs in subsection (1); added paragraphs (1)(i) and (1)(j); in the next-to-last sentence in subsection (3), added "and shall retain the documentation for a minimum of five (5) years from the date the item or service was provided"; in the next-to-last sentence in subsection (5), added "under any public assistance contract or provider agreement the individual or entity has with the department"; in paragraph (6)(f),

added "or other public assistance program payments"; in paragraph (6)(i), inserted "or public assistance"; in the last paragraph in subsection (6), substituted "any public assistance program" for "the medical assistance program"; in subsection (7), inserted "medicaid provider"; in subsection (9), inserted "as a medicaid provider"; and added subsections (10) and (11) and redesignated former subsection (10) as subsection (12).

Legislative Intent.

Section 1 of S.L. 1998, ch. 311 provided: "FINDINGS. The legislature finds that provider fraud and abuse in medical assistance programs is a potential problem which demands effective administrative remedies. This act is intended to provide explicit authority to the Department of Health and Welfare to establish conditions of payments, to suspend payments and impose interest charges, to terminate provider agreements and deny provider status, to impose civil monetary penalties and to exclude certain individuals and entities."

Federal References.

The references to subchapters XIX and XXI, chapter 7, title 42, in subsection (2), are to Titles XIX and XXI of Act of Aug. 14, 1935, ch. 531, which are currently codified as 42 USCS § 1396 et seq. and 42 USCS § 1397aa et seq., respectively.

56-209i. Legislative findings. — It is the intent of the legislature that the provisions of this act enhance the employability of participants in the

temporary assistance for families in Idaho (TAFI) programs through substance abuse screening and, where appropriate, testing and treatment. The legislature finds that a significant number of employers use preemployment drug testing. Substance abuse adds to the difficulties such individuals have in securing employment. The legislature also finds that substance abuse in and of itself impairs personal responsibility and self-sufficiency and stands in the way of the very intent of the TAFI program to care for the health and welfare of certain qualified recipients and in so doing results in welfare costs that burden the state's taxpayers. The legislature further finds that substance abuse adversely affects a significant portion of the workforce, which results in billions of dollars of lost productivity each year and poses a threat to the safety of the workplace and to the public safety and security. In balancing the interests of taxpayers, participants in the TAFI program and potential employers against the interests of those who will be screened and tested under this act, the legislature finds that screening, testing and treatment as provided for in this act are in the greater interests of all concerned.

History.

I.C., § 56-209i, as added by 2000, ch. 467,
§ 1, p. 1447.

STATUTORY NOTES**Compiler's Notes.**

The term "this act," as used in this section, refers to S.L. 2000, ch. 467, which is codified as §§ 56-209i to 56-209l.

The abbreviation enclosed in parentheses so appeared in the law as enacted.

56-209j. Substance abuse screening and testing programs. —

(1) The department of health and welfare shall develop for implementation in fiscal year 2001, a program to screen each applicant who is otherwise eligible for temporary cash assistance provided under this chapter, and to subject to testing any applicant or participant who the department has reasonable suspicion to believe, based on the screening or other factors, is at risk of substance abuse.

(2) Prior to the first regular session of the fifty-sixth Idaho legislature, the department shall promulgate the necessary rules, pursuant to chapter 52, title 67, Idaho Code, to govern substance abuse screening and testing for TAFI programs. Rules shall, at a minimum:

(a) Specifically address the confidentiality of the screening and test results, and provide that individual results are protected under section 9-340C(6), Idaho Code, and are not subject to disclosure except to an evaluating or treating substance abuse program, and cannot be released for use in any criminal investigation or proceeding;

(b) Provide notice of screening and testing requirements to each applicant at the time of application. The notice must, at a minimum, advise the applicant that substance abuse screening and possible testing will be conducted as a condition for receiving temporary assistance or services under this chapter. The applicant shall be advised that the required

screening and possible testing may be avoided if the applicant does not apply for or receive assistance or services. The screening and testing program is not applicable in child only cases;

(c) Develop procedures for substance abuse screening and testing of applicants for and recipients of temporary assistance or services under the TAFI program;

(d) Provide a procedure to advise each person to be tested, before the test is conducted, that he or she may, but is not required to, advise the agent administering the test of any prescription or over-the-counter medication he or she is taking;

(e) Require each person to be tested to sign a written acknowledgment that he or she has received and understood the notice and advice provided under paragraphs (a) and (d) of this subsection;

(f) Provide a procedure to assure each person being tested a reasonable degree of dignity while producing and submitting a sample for drug testing, consistent with the state's need to ensure the reliability of the sample;

(g) Specify circumstances under which a person who tests positive has the right to take one (1) or more additional tests;

(h) Provide a procedure for appealing the results of a test by a person who tests positive, and denial of TAFI services or benefits;

(i) Provide a definition for reasonable suspicion and high risk;

(j) Delineate the substances which will be screened;

(k) Establish outcome measures which can substantiate program effectiveness.

History.

I.C., § 56-209j, as added by 2000, ch. 467,
§ 2, p. 1447.

56-209k. Children. — If a parent is deemed ineligible for cash assistance due to the operation of this act, his or her dependent child's eligibility for cash assistance is not affected.

If a parent is deemed ineligible for cash assistance due to the operation of this act, an appropriate protective payee may be established for the benefit of the child.

If the parent refuses to cooperate in establishing an appropriate protective payee for the child, the department may appoint one.

History.

I.C., § 56-209k, as added by 2000, ch. 467,
§ 3, p. 1447.

STATUTORY NOTES

Compiler's Notes.

The term "this act," as used in this section,

refers to S.L. 2000, ch. 467, which is codified as §§ 56-209i to 56-209l.

56-209l. Treatment provisions. — The department shall refer for appropriate evaluation and provide for the treatment of any applicant or

participant who, in the reasonable suspicion of the department, is engaged in substance abuse. Treatment shall be community-based and gender-specific. The department shall provide for the transportation and child care needs of the applicant if necessary. TAFI benefits or services may be denied to any applicant or participant who refuses to cooperate with reasonable screening, testing or treatment requests, or who, based on a preponderance of the evidence, engages in substance abuse following treatment. Any individual referred to treatment shall be notified of the local treatment programs appropriate to that person's needs.

History.

I.C., § 56-209l, as added by 2000, ch. 467,
§ 4, p. 1447.

56-209m. Weight control pilot project. — Based upon available funding, the director of the department of health and welfare is directed to apply for the appropriate waiver or waivers from the centers for medicare and medicaid services for the state medicaid program to conduct a pilot project to determine the effectiveness of, and projected cost savings which may result from, providing reimbursement for weight control therapies, including anorexic drugs, and nutritional, diet and exercise counseling, in the state medicaid drug program, with the following limitations:

- (1) Participation in the pilot program shall be limited to one hundred (100) clients;
- (2) The length of the pilot program shall be limited to three (3) years;
- (3) Participation shall be limited to clients with a body mass index (BMI) over twenty-five (25); and
- (4) The department shall report annually to the senate and house health and welfare committees concerning the progress on all programs initiated under the waiver.

History.

I.C., § 56-209m, as added by 2004, ch. 269,
§ 1, p. 752.

STATUTORY NOTES**Compiler's Notes.**

The abbreviation enclosed in parentheses so appeared in the law as enacted.

56-209n. Medicaid for workers with disabilities. — (1) The legislature finds that many individuals with disabilities would like to work but cannot afford to enter the workforce due to the fear of losing necessary medical services received through medicaid. Idaho hereby seeks to avail itself of the opportunity available through the federal ticket to work and work incentives improvement act of 1999, which allows states to establish new medicaid eligibility categories for working people with disabilities whose income or resources would otherwise make them ineligible for medicaid. Eliminating barriers to health care and other needed services and supports and creating financial incentives to work will greatly improve the

short and long-term financial independence and well-being of people with disabilities. Medicaid for workers with disabilities will serve to increase the productivity of Idaho residents with disabilities and thereby enhance the economic and fiscal status of this state.

(2) An individual is eligible to participate in the medicaid for workers with disabilities program if the individual:

(a) Is at least sixteen (16) years of age and not more than sixty-four (64) years of age;

(b) Has a disability as defined in title XVI of the federal social security act, as amended. An individual shall be determined to be eligible under this section without regard to his or her ability to engage in, or actual engagement in, substantial gainful activity, as defined in section 223(d)(4) of the social security act (42 U.S.C. section 423(d)(4));

(c) Is employed, including self-employment, and has provided the department of health and welfare with satisfactory written proof of employment. Hourly wage or hours worked shall not be used to determine employment;

(d) Has countable resources of ten thousand dollars (\$10,000) or less. In calculating resources the following items shall be excluded: a second car, life insurance policies, retirement accounts, beneficial trusts, and any other resources excluded under current rules promulgated by the department of health and welfare for aid to aged, blind and disabled (AABD); and

(e) Has countable income, after exclusions and disregards as set forth in rules promulgated by the department of health and welfare for participants receiving AABD benefits, which do [does] not exceed five hundred percent (500%) of the federal poverty level.

(3) An eligible individual who has an income as determined pursuant to subsection (2)(e) of this section less than one hundred thirty-three percent (133%) of the federal poverty level shall not be required to pay a premium for medicaid.

(4) The department of health and welfare may require an eligible individual who has an income as determined pursuant to subsection (2)(e) of this section of one hundred thirty-three percent (133%) to two hundred fifty percent (250%) of the federal poverty level to pay a monthly premium as set forth in rules promulgated by the department of health and welfare.

(5) An eligible individual who has an income as determined pursuant to subsection (2)(e) of this section in excess of two hundred fifty percent (250%) of the federal poverty level shall pay to the department of health and welfare a monthly premium as a condition for continued eligibility for medicaid. The monthly premium shall be calculated by multiplying seven and one-half percent (7.5%) by the amount of the individual's income as determined pursuant to subsection (2)(e) of this section which is above two hundred fifty percent (250%) of the federal poverty level.

History.

I.C., § 56-209n, as added by 2006, ch. 174,
§ 1, p. 533.

STATUTORY NOTES

Federal References.

The federal ticket to work and work incentives improvement act of 1999, referred to in subsection (1), is Public Law 106-170, which is generally codified in titles 26 and 42.

Title XVI of the federal social security act, referred to in paragraph (2)(b), is codified as 42 U.S.C.S. § 1381 et seq.

Compiler's Notes.

The bracketed insertion in paragraph (2)(e)

was added by the compiler to correct a grammatical error in the enacting legislation.

The reference and abbreviation enclosed in parentheses so appeared in the law as enacted.

Effective Dates.

Section 2 of S.L. 2006, ch. 174 provided that the act should take effect on and after January 1, 2007.

56-209o. Failure to retain records. — (1) Whoever receives payment for treatment, services or goods under the provisions of this chapter or under the state plan pursuant to subchapter XIX or XXI, chapter 7, title 42, U.S.C., shall retain for a period of at least five (5) years all records required to be maintained by rule of the department for administration of the medicaid program.

(2) It shall be unlawful with an intent to evade or avoid the provisions of this act: to fail to retain the records specified in subsection (1) of this section for a period of at least five (5) years from the date payment was claimed or received, whichever is later; or to knowingly destroy or cause the records specified in subsection (1) of this section to be destroyed within five (5) years from the date payment was claimed or received, whichever is later. Any person who, with an intent to evade or avoid the provisions of this act, fails to retain records or destroys records or causes records to be destroyed as provided in this subsection (2), with an intent to evade or avoid the provisions of this act, shall be subject to the following criminal sanctions:

(a) If the treatment, services or goods for which records were not retained or for which records were destroyed amount to not more than one thousand dollars (\$1,000), the person shall be guilty of a misdemeanor and shall be sentenced pursuant to section 18-113, Idaho Code.

(b) If the value of the treatment, services or goods for which records were not retained or for which records were destroyed is more than one thousand dollars (\$1,000), the person shall be guilty of a felony and shall be sentenced pursuant to section 18-112, Idaho Code.

(c) If the records not retained or destroyed were used in whole or in part to determine a rate of payment under the program, the person shall be guilty of a misdemeanor and shall be sentenced pursuant to section 18-113, Idaho Code.

History.

I.C., § 56-209o, as added by 2007, ch. 341, § 3, p. 1000.

STATUTORY NOTES

Federal References.

The references to subchapters XIX and XXI, chapter 7, title 42, in subsection 1, are to Titles XIX and XXI of Act of Aug. 14, 1935, ch. 531, which are currently codified as 42 USCS

§ 1396 et seq. and 42 USCS § 1397aa et seq., respectively.

Compiler's Notes.

The term "this act" in subsection (1) refers

to S.L. 2007, ch. 341, which is codified as §§ 15-8-103, 56-209h, 56-209o, 56-226, 56-227, 56-227B to 56-227E, and 67-1401.

56-209p. Payment for midwife services. — A midwife licensed pursuant to chapter 55, title 54, Idaho Code, shall be entitled to payment under the rules of the medical assistance program for midwife services provided to an eligible recipient of medical assistance.

History.
I.C., § 56-209p, as added by 2011, ch. 182, § 1, p. 516.

STATUTORY NOTES

Legislative Intent.
Section 2 of S.L. 2011, ch. 182 provided: “Legislative Intent. It is the intent of the Legislature that the services of a licensed midwife be an option for an eligible recipient

who qualifies for medical assistance. It is not the intent of the Legislature that such eligible recipient be required to use the services of a licensed midwife.”

56-210. Amount of assistance. — (1) The amount of public assistance which any eligible person or family may receive shall be determined in accordance with the rules of the state department subject to the availability of funds for such assistance.

(2) Old age assistance, aid to the blind and aid to the permanently and totally disabled shall be granted to a person who is needy as defined by the department and who meets the nonfinancial requirements of title XVI of the social security act.

(3) The department may also increase or decrease the payment for groups of cases where the circumstances are specifically identified. The department shall be the single state agency for administration of public assistance programs or plans that receive federal funding.

History.
1941, ch. 181, § 10, p. 379; am. 1945, ch. 109, § 4, p. 165; am. 1951, ch. 246, § 2, p. 520; am. 1953, ch. 22, § 1, p. 38; am. 1961, ch. 57, § 1, p. 85; am. 1969, ch. 30, § 1, p. 51; am.

1978, ch. 246, § 5, p. 537; am. 1981, ch. 179, § 2, p. 313; am. 1994, ch. 287, § 1, p. 906; am. 1996, ch. 50, § 7, p. 147; am. 1997, ch. 32, § 1, p. 56.

STATUTORY NOTES

Federal References.
Title XVI of the federal social security act, referred to in subsection (2), is codified as 42 U.S.C.S. § 1381 et seq.

Effective Dates.
Section 3 of S.L. 1981, ch. 179 declared an emergency. Approved March 31, 1981.

JUDICIAL DECISIONS

ANALYSIS

Authority to regulate.
Available resources.
Constitutionality.
Determining need.
Income and resources available to child.

—Deductible costs.

Authority to Regulate.

The state department of health and welfare has been delegated the power to define dependent children and this power would seem to include the authority to promulgate regulations concerning how eligibility is determined and reevaluated over time. *Tappen v. State, Dep't of Health & Welfare*, 102 Idaho 807, 641 P.2d 994 (1982).

Available Resources.

Where state department regulations provided that public assistance recipients could retain up to \$500 in cash, and that any retroactive payment made to correct an underpayment would be excluded from the determination of a recipient's income and resources in the month paid and in the next following month, such regulations were consistent with the purposes of the aid to families with dependent children program as established by federal law and as implemented in Idaho by § 56-209. Where the department followed its regulations and excluded a March lump-sum retroactive payment of \$5800 from the recipients' resources during March and April, the department acted properly when in May it considered the \$2900 that remained from that March payment as a resource of the recipients and terminated their benefits since that amount far exceeded the \$500 limitation of the state regulation. *Tappen v. State, Dep't of Health & Welfare*, 102 Idaho 807, 641 P.2d 994 (1982).

Constitutionality.

Requirement that applicants for old-age assistance grant a lien to state on real estate of applicants whereas there is no such requirement as to applicants owning only personal property does not deny equal protection of the law, since old-age assistance is granted with due regard "to the income and resources available to him from whatever source." *Newland v. Child*, 73 Idaho 530, 254 P.2d 1066 (1953).

Determining Need.

A basic principle of both the state and federal regulation of the aid to families with dependent children program requires that in determining need, deprivation, dependency and ultimate eligibility for public assistance that all currently and actually available income and resources of a recipient be considered. *Tappen v. State, Dep't of Health & Welfare*, 102 Idaho 807, 641 P.2d 994 (1982).

Income and Resources Available to Child.

A grandparent has no duty to support a needy grandchild. *Haggard v. Idaho Dep't of Health & Welfare*, 98 Idaho 55, 558 P.2d 84 (1977).

Where the mother was living in a house owned by her parents and was not herself eligible for a housing allowance, this did not negate the eligibility of her children, and, therefore, her family, for aid to dependent children benefits, even though this allowance was paid to the mother as the caretaker parent. *Haggard v. Idaho Dep't of Health & Welfare*, 98 Idaho 55, 558 P.2d 84 (1977).

A state is not required to provide benefits that are equal to the actual need of a recipient. Under the social security act provisions for aid to families with dependent children (AFDC), 42 U.S.C. § 601, et seq., the level of benefits to be paid is within the judgment of the state, so long as some aid is provided to all eligible children; the policy of the Idaho department of health and welfare in ratably reducing benefits is authorized by this section. *White v. Pierce*, 628 F. Supp. 932 (D. Idaho 1986).

—Deductible Costs.

The language of regulations used by the department of health and welfare to determine allowable costs to be deducted from gross income, in establishing eligibility for assistance, does not limit the allowable deductions to those items listed; the terms "include" and "such as" are not restrictive terms which exclude other appropriate costs from also being deductible. *Posey v. State, Dep't of Health & Welfare*, 114 Idaho 449, 757 P.2d 712 (Ct. App. 1988).

Chapter 13 payments to a trustee in bankruptcy were not allowable business deductions from gross income, in determining a farmer's eligibility for aid to families of dependent children, food stamps and medical assistance under the regulations of the department of health and welfare, as the payments did not relate to current income production and had not been shown to be for debts originally incurred as business costs. *Posey v. State, Dep't of Health & Welfare*, 114 Idaho 449, 757 P.2d 712 (Ct. App. 1988).

Cited in: *State ex rel. Rich v. Idaho Power Co.*, 81 Idaho 487, 346 P.2d 596 (1959); *University of Utah Medical Center v. Bonneville County*, 96 Idaho 432, 529 P.2d 1304 (1974).

RESEARCH REFERENCES

C.J.S. — 81 C.J.S., Social Security and Public Welfare, § 183 et seq.

56-210a. Amount of medical assistance for the aged. [Repealed.]

STATUTORY NOTES

Compiler's Notes.

This section, which comprised I.C., § 56-210a, as added by 1961, ch. 217, § 4, p. 346,

was repealed by S.L. 1966 (2nd E.S.), ch. 11, § 5, p. 28.

56-211. Application for public assistance — Verification for federal food stamp program. — (1) Application for public assistance under this act shall be made in the manner and form prescribed by the state department and the application shall contain such information bearing on the applicant's eligibility as the state department may require and as required in subsection (2) of this section.

(2) Applicants seeking benefits under the federal food stamp program shall verify to the state department the identity of each household member the applicant lists on the application for such benefits. Identification may be verified either through readily available documentary evidence, such as a birth certificate, or through a collateral contact as set forth in federal law, 7 CFR 273.2. Upon a showing of good cause by the applicant as to why such documentary evidence or collateral contact has not been provided, the state department shall grant an extension and the applicant may receive the public assistance for which he or she has applied for one (1) month. A showing of good cause shall be required each month the applicant fails to provide the state department with the required documentary evidence or collateral contact. Good cause is not shown where a delay in providing documentary evidence or providing a collateral contact is due to illness, lack of transportation or temporary absences. The provisions of this subsection shall not apply to applicants who provide, or who have previously provided, a document as set forth in section 67-7903(4)(b)(viii) or (ix), Idaho Code.

(3) The state department may promulgate rules to implement the provisions of this section.

History.

1941, ch. 181, § 11, p. 379; am. 2011, ch. 269, § 1, p. 729.

STATUTORY NOTES

Amendments.

The 2011 amendment, by ch. 269, added "Verification for federal food stamp program" in the section heading; added the subsection (1) designation, and therein added "and as required in subsection (2) of this section"; and added subsections (2) and (3).

to S.L. 1941, ch. 181, which is compiled as §§ 56-201 to 56-203, 56-206 to 56-208, 56-210, 56-211 to 56-214, 56-215 to 56-217, 56-219 to 56-224, 56-227, and 56-228 to 56-230. The reference probably should be to "this chapter," being chapter 2, title 56, Idaho Code.

Compiler's Notes.

The term "this act" in subsection (1) refers

JUDICIAL DECISIONS

Cited in: Haggard v. Idaho Dep't of Health & Welfare, 98 Idaho 55, 558 P.2d 84 (1977).

56-212. Investigation of application. — Whenever the state department shall receive an application for public assistance under this act, it shall promptly make an investigation and record of the circumstances of the applicant in order to ascertain the facts supporting the application and to obtain such other information as it may require.

History.

1941, ch. 181, § 12, p. 379.

STATUTORY NOTES

Compiler's Notes.

The term "this act" refers to S.L. 1941, ch. 181, which is compiled as §§ 56-201 to 56-203, 56-206 to 56-208, 56-210, 56-211 to 56-

214, 56-215 to 56-217, 56-219 to 56-224, 56-227, and 56-228 to 56-230. The reference probably should be to "this chapter," being chapter 2, title 56, Idaho Code.

56-213. Examination to determine blindness. — No application for aid to the blind shall be approved until an ophthalmologist or physician skilled in diseases of the eye, or an optometrist, approved or designated by the state department, shall have examined the applicant and shall have certified his findings in the manner and form required by the state department.

History.

1941, ch. 181, § 13, p. 379; am. 1951, ch. 246, § 3, p. 520.

STATUTORY NOTES

Compiler's Notes.

Section 67-5403 provides that all powers and duties of the department of public assistance relating to services to the blind and

sight conservation are transferred to and shall be assumed by the commission for the blind [and visually impaired].

56-214. Award of public assistance — Ineligibility upon transfer of property. — Upon the completion of the investigation, the state department shall determine whether the applicant is eligible for public assistance under the provisions of this act, the type and amount of public assistance he shall receive, and the date upon which such public assistance shall begin. Public assistance shall be paid in the manner prescribed by the state department.

(1) Assistance to families with children shall not be granted under this act to any person who within six (6) months prior to applying for or at any time during which such assistance is received, has either made an assignment or transfer of property for the purpose of rendering himself eligible for assistance under this act, or who has divested himself of any interest in property without adequate consideration which interest or proceeds therefrom could reasonably be expected to contribute to the support and main-

tenance of such person and his family, except that any person who is ineligible for public assistance due solely to such assignment or transfer shall become eligible provided:

(a) There is a showing that such person has caused such property to be assigned or transferred back to him; or

(b) There is a showing that the person to whom such property is assigned or transferred has, subsequent to such assignment or transfer, met subsistence and medical care costs exclusive of any obligation for support, of such person or family, according to the department's assistance standard, equal to, or in excess of, the market value of the property so assigned or transferred; or

(c) There is a showing that the subsistence and medical care costs of such person, according to the department's assistance standard, subsequent to such assignment or transfer, equal or exceed the market value of the property so assigned or transferred.

(2) Eligibility for old age assistance under section 56-207, Idaho Code, or aid to the blind under section 56-208, Idaho Code, or aid to the disabled under section 56-209a, Idaho Code, shall be determined by continuing to consider as available any resource that was transferred prior to July 1, 1988, until such resource is fully accounted for under the provisions of section 1613(c) of the social security act as such section read on June 30, 1988.

(3) Eligibility for medical assistance under section 56-209b, Idaho Code, shall continue to apply the rules of the director of the department of health and welfare concerning transfer of property as such rules read on October 29, 1988, to transfers that occur prior to July 1, 1989, to persons other than to the spouse of the person receiving or applying for medical assistance, and to interspousal transfers that occur prior to October 1, 1989.

(4) The provisions of section 1917(c) of the social security act as amended by public law 100-360 and further amended by public law 100-485 and as hereafter amended shall apply as of July 1, 1989, to transfers of assets other than to the spouse, and as of October 1, 1989, to transfers between spouses, except that such provisions shall not apply either to transfers that occurred before July 1, 1988, or to transfers that have been fully accounted for under subsection (3) of this section. Notwithstanding the foregoing, any transfer of assets not otherwise specifically permitted by federal law or rule of the department not for fair market value is presumed to be for the purpose of sheltering assets to qualify for medical assistance. Such assets transferred shall be counted as available in determining eligibility, and will subject the applicant to penalties prescribed by the director, unless the applicant for assistance can demonstrate by clear and convincing evidence that the transfer was intended for another purpose.

(5) Any funds, securities, accounts, contracts and all other property held in or transferred to a special needs trust as provided in chapter 14, title 68, Idaho Code, section 15-5-409, Idaho Code, and section 15-5-409a, Idaho Code, shall not be considered by the state department in determining whether the applicant is eligible for public assistance under the provisions of this act, so long as the action is permitted under the provisions of section 1917(c) and (d) of the social security act, as amended.

(6) If any provision of this section or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the section that can be given effect without the invalid provisions or applications, and to this end the provisions of this section are severable.

History.

1941, ch. 181, § 14, p. 379; am. 1943, ch. 119, § 1, p. 228; am. 1951, ch. 246, § 4, p. 520; am. 1974, ch. 233, § 8, p. 1590; am. 1978, ch. 74, § 1, p. 148; am. 1981, ch. 121, § 1, p. 207;

am. 1989, ch. 67, § 2, p. 107; am. 1995, ch. 214, § 4, p. 742; am. 1996, ch. 50, § 8, p. 147; am. 2002, ch. 279, § 1, p. 815; am. 2007, ch. 248, § 1, p. 728; am. 2008, ch. 146, § 1, p. 430.

STATUTORY NOTES

Amendments.

The 2007 amendment, by ch. 248, in the second sentence in subsection (4), inserted “or rule of the department,” and deleted “between spouses or to another for the benefit of a spouse” following “form of annuity.”

The 2008 amendment, by ch. 146, in the second sentence in subsection (4), deleted “whether or” preceding, and “including, but not limited to, a transfer in the form of an annuity” following, “not for fair market value”.

Federal References.

Section 1613 of the social security act, referred to in subsection (2), is codified as 42 U.S.C.S. § 1382b.

Sections 1917 of the Social Security Act, referred to in this section, is codified in 42 U.S.C.S. § 1396p.

Compiler's Notes.

The term “this act” in the introductory paragraph refers to S.L. 1941, ch. 181, which is compiled as §§ 56-201 to 56-203, 56-206 to 56-208, 56-210, 56-211 to 56-214, 56-215 to 56-217, 56-219 to 56-224, 56-227, and 56-228 to 56-230. The reference probably should be to “this chapter,” being chapter 2, title 56, Idaho Code.

The term “this act” in the introductory paragraph in subsection (1) refers to S.L. 1943, ch. 119, which is codified as §§ 56-214 and 56-227.

Effective Dates.

Section 2 of S.L. 1981, ch. 121 declared an emergency. Approved March 26, 1981.

Section 2 of S.L. 2007, ch. 248 declared an emergency retroactively to January 1, 2007 and approved March 28, 2007.

JUDICIAL DECISIONS

Cited in: *Stafford v. Idaho Dep't of Health & Welfare* (In re *Stafford*), 145 Idaho 530, 181 P.3d 456 (2008).

56-214A. Award of public assistance — Recipient's right of free choice. — If an award of public assistance which includes an eye examination is made to or in behalf of an individual, that individual or his legal custodian shall have the right to select any practitioner to perform such examination who is licensed by the state of Idaho to perform eye examinations. Whenever such an award is applied for or approved, the state department or its personnel shall not recommend any practitioner or system of practice from among those licensed to perform eye examinations.

History.

I.C., § 56-214A, as added by 1963, ch. 8, § 1, p. 19; am. 1965, ch. 62, § 1, p. 97.

STATUTORY NOTES

Effective Dates.

Section 2 of S.L. 1963, ch. 8 declared an emergency. Approved February 8, 1963.

Section 2 of S.L. 1965, ch. 62 declared an emergency. Approved February 27, 1965.

56-215. Redetermination of awards. — Awards of public assistance may be changed or withdrawn whenever the circumstances have altered sufficiently to warrant such action. If at any time during the continuance of public assistance the recipient thereof becomes possessed of income or resources in excess of the amount previously reported by him, it shall be his duty to notify the state department of this fact immediately on the receipt or possession of such additional income or resources.

History.

1941, ch. 181, § 15, p. 379.

RESEARCH REFERENCES

A.L.R. — Sufficiency of notice or hearing required prior to termination of welfare benefits. 47 A.L.R.3d 277.

56-216. Appeal and fair hearing. — An applicant or recipient aggrieved because of the state department's decision or delay in making a decision shall be entitled to appeal to the state department in the manner prescribed by it and shall be afforded reasonable notice and opportunity for a fair hearing by the state department.

History.

1941, ch. 181, § 16, p. 379.

JUDICIAL DECISIONS

Cited in: *Madsen v. State, Dep't of Health & Welfare*, 114 Idaho 182, 755 P.2d 479 (Ct. App. 1988).

56-217. Cooperative agreements. — The state department and the several counties of the state or other branches of state, county or municipal government are authorized to enter into cooperative agreements, through their appropriate officials, with respect to the administration of public assistance and social services. Among other things such an agreement may provide for:

- (a) The assumption by the state department of responsibilities involving public assistance or social services ordinarily incumbent upon the county or other branch of government;
- (b) The direct administration through the state department of any form of public assistance or care of the poor now or hereafter authorized to be granted by a county, but subject to the financial control of the county;
- (c) Mutual financial participation in programs of public assistance and social services in conformity with regulations of the department.

(d) The intake and investigation of applications for public assistance by the appropriate office of the state department;

(e) The granting of public assistance financed in whole or in part by county funds on the basis of policies, rules and regulations governing eligibility and amount of assistance adopted by the state department under this act.

History.

1941, ch. 181, § 17, p. 379.

STATUTORY NOTES

Compiler's Notes.

The term "this act" in subsection (e) refers to S.L. 1941, ch. 181, which is compiled as §§ 56-201 to 56-203, 56-206 to 56-208, 56-

210, 56-211 to 56-214, 56-215 to 56-217, 56-219 to 56-224, 56-227, and 56-228 to 56-230. The reference probably should be to "this chapter," being chapter 2, title 56, Idaho Code.

56-218. Recovery of certain medical assistance. — (1) Except where exempted or waived in accordance with federal law medical assistance pursuant to this chapter paid on behalf of an individual who was fifty-five (55) years of age or older when the individual received such assistance may be recovered from the individual's estate, and the estate of the spouse, if any, for such aid paid to either or both:

(a) There shall be no adjustment or recovery until after the death of both the individual and the spouse, if any, and only at a time when the individual has no surviving child who is under twenty-one (21) years of age or is blind or permanently and totally disabled as defined in 42 U.S.C. 1382c.

(b) While one (1) spouse survives, except where joint probate will be authorized pursuant to section 15-3-111, Idaho Code, a claim for recovery under this section may be established in the estate of the deceased spouse.

(c) The claim against the estate of the first deceased spouse must be made within the time provided by section 15-3-801(b), Idaho Code, if the estate is administered and actual notice is given to the director as required by subsection (5) of this section. However, if there is no administration of the estate of the first deceased spouse, or if no actual notice is given to the director as required by subsection (5) of this section, no claim shall be required until the time provided for creditor claims in the estate of the survivor.

(d) Nothing in this section authorizes the recovery of the amount of any aid from the estate or surviving spouse of a recipient to the extent that the need for aid resulted from a crime committed against the recipient.

(2) Transfers of real or personal property, on or after the look-back dates defined in 42 U.S.C. 1396p, by recipients of such aid, or their spouses, without adequate consideration are voidable and may be set aside by an action in the district court.

(3) Except where there is a surviving spouse, or a surviving child who is under twenty-one (21) years of age or is blind or permanently and totally disabled as defined in 42 U.S.C. 1382c, the amount of any medical assistance paid under this chapter on behalf of an individual who was fifty-five (55)

years of age or older when the individual received such assistance is a claim against the estate in any guardianship or conservatorship proceedings and may be paid from the estate.

(4) For purposes of this section, the term “estate” shall include:

(a) All real and personal property and other assets included within the individual’s estate, as defined for purposes of state probate law; and

(b) Any other real and personal property and other assets in which the individual had any legal title or interest at the time of death, to the extent of such interest, including such assets conveyed to a survivor, heir, or assign of the deceased individual through joint tenancy, tenancy in common, survivorship, life estate, living trust or other arrangement.

(5) Claims made pursuant to this section shall be classified and paid as a debt with preference as defined in section 15-3-805(5), Idaho Code. Any distribution or transfer of the estate prior to satisfying such claim is voidable and may be set aside by an action in the district court. The personal representative of every estate subject to a claim under this section must, within thirty (30) days of the appointment, give notice in writing to the director of his or her appointment to administer the estate.

(6) The department may file a notice of lien against the property of any estate subject to a claim under this section.

(a) In order to perfect a lien against real or personal property, the department shall, within ninety (90) days after the personal representative or successor makes a written request for prompt action to the director, or three (3) years from the death of the decedent, whichever is sooner, file a notice of lien in the same general form and manner as provided in section 56-218A(3)(a), Idaho Code, in the office of the secretary of state, pursuant to section 45-1904, Idaho Code. Failure to file a notice of lien does not affect the validity of claims made pursuant to this section.

(b) The department may release the lien in whole or in part to permit the estate property to be administered by a court-appointed personal representative.

(c) The department may foreclose its lien, without probate, in any of the following circumstances:

(i) Where no personal representative has been appointed after one (1) year from the date of death of the survivor of both the individual and spouse, if any;

(ii) Where the property has been abandoned by the decedent’s heirs or successors, if any;

(iii) Where the real property taxes that are due and payable have remained unpaid for two (2) years and, after demand by the department, the heirs or successors, if any, have failed to seek appointment or pay the property taxes; or

(iv) Where all parties interested in the estate consent to foreclosure of the lien.

(7) The director shall promulgate rules reasonably necessary to implement this section including, but not limited to, rules establishing undue hardship waivers for the following circumstances:

(a) The estate subject to recovery is income-producing property that provides the primary source of support for other family members; or

(b) The estate has a value below an amount specified in the rules; or

(c) Recovery by the department will cause the heirs of the deceased individual to be eligible for public assistance.

(8) The cause of action to void a transfer without adequate consideration established in this section shall not be deemed to have accrued until the department discovers, or reasonably could have discovered, the facts constituting the transfer without adequate consideration.

History.

I.C., § 56-218, as added by 1988, ch. 49, § 1, p. 73; am. 1994, ch. 329, § 1, p. 1059; am. 1995, ch. 105, § 1, p. 336; am. 1997, ch. 205,

§ 2, p. 607; am. 1998, ch. 9, § 1, p. 106; am. 2004, ch. 216, § 1, p. 650; am. 2005, ch. 304, § 1, p. 951; am. 2006, ch. 179, § 2, p. 553; am. 2008, ch. 182, § 7, p. 552.

STATUTORY NOTES

Prior Laws.

Former § 56-218, which comprised 1941, ch. 181, § 18, p. 379; am. 1945, ch. 109, § 5, p. 165, was repealed by S.L. 1977, ch. 153, § 1, effective July 1, 1978.

Amendments.

The 2006 amendment, by ch. 179, rewrote subsection (1), which formerly read: "Except where exempted or waived in accordance with federal law medical assistance pursuant to this chapter paid on behalf of an individual who was fifty-five (55) years of age or older when the individual received such assistance may be recovered from the individual's estate, and the estate of the spouse, if any, for such aid paid to either or both; provided, however, that claim for such medical assistance correctly paid to the individual may be established against the estate of either spouse, but there shall be no adjustment or recovery thereof until after the death of the spouse, if any, and only at a time when the individual has no surviving child who is under twenty-one (21) years of age or is blind or permanently and totally disabled as defined in 42 U.S.C. 1382c. Transfers of real or personal property, on or after the look-back dates defined in 42 U.S.C. 1396p, by recipients of such aid, or their spouses, without adequate consideration are voidable and may be set aside by an action in the district court" and made that subsection into present subsections (1) and (2); redesignated former subsection (2) as present subsection (3); deleted former subsection (3), which formerly read: "Nothing in this section authorizes the recovery of the amount of any aid from the estate or surviving spouse

of a recipient to the extent that the need for aid resulted from a crime committed against the recipient"; added the subsection (a) designation at the beginning of the second sentence of subsection (6); substituted "decedent" for "individual for whom medical assistance was paid under this chapter" in present subsection (6)(a); added subsections (6)(b) to (6)(c); substituted "estate subject to recovery is income-producing property that" for "only asset of the estate" in subsection (7)(a); and in subsection (7)(c), deleted "under the lien" following "Recovery", substituted "cause" for "entitle", and inserted "be eligible for."

The 2008 amendment, by ch. 182, in subsection (5), deleted the former last sentence, subsections (5)(a) and (5)(b), and the last paragraph, which all dealt with petitioning the court for an exempt property allowance claim under certain circumstances.

Compiler's Notes.

Section 10 of S.L. 1997, ch. 205 read: "Notwithstanding the effective dates specified in section 1 through 9 of this act, nothing in this act shall take effect unless the secretary of state shall certify to the Idaho Code Commission that he has received a sufficient appropriation to provide for the development of the technology required to implement the provisions of this act. If the certification is not made by the twenty-first day after the adjournment sine die of the First Regular Session of the Fifty-fourth Idaho Legislature, this act shall be null and void."

The secretary of state has so certified to the Idaho code commission and, thus, the chapter 205 became effective as prescribed therein.

JUDICIAL DECISIONS

ANALYSIS

Recovery from community property.

Recovery from spouse's estate.

Recovery from Community Property.

Even though federal law preempted this section, where a marriage settlement agreement transmuted most of husband's and wife's community property and the income from that property into separate property of the husband, the department of health and welfare could recover only community property accumulated after the agreement. *Idaho Dep't of Health & Welfare v. Jackman*, 132 Idaho 213, 970 P.2d 6 (1998), overruled on other grounds, *Verska v. St. Alphonsus Med. Ctr.*, 151 Idaho 889, 265 P.3d 502 (2011).

Recovery from Spouse's Estate.

If the estate of an individual who received Medicaid assistance is inadequate to repay the full amount of the assistance received, the state can recover the balance from the estate of the surviving spouse. *Idaho Dep't of Health & Welfare v. Jackman*, 132 Idaho 213, 970 P.2d 6 (1998), overruled on other grounds, *Verska v. St. Alphonsus Med. Ctr.*, 151 Idaho 889, 265 P.3d 502 (2011).

In an attempt to recoup Medicaid benefits paid out on behalf of decedent's husband, the Idaho department of health and welfare maintained that it was entitled to proceed against decedent's estate; magistrate properly ruled that the department had no cause of action under this section because the decedent was entitled to retain certain assets for her own use. *State, Dept. of Health & Welfare v. Estate of Elliott (In re Estate of Elliott)*, 141 Idaho 177, 108 P.3d 324 (2005).

Idaho department of health and welfare could not recover medicaid benefits paid to a decedent until his spouse died, but its claim for reimbursement was still subject to the deadlines of § 15-3-803(a)(1); as the department did not present its claim within two years after the decedent's death, the claim was untimely. *State v. Estate of Kaminsky (In re Estate of Kaminsky)*, 141 Idaho 436, 111 P.3d 121 (2005), overruled on other grounds, *Verska v. St. Alphonsus Med. Ctr.*, 151 Idaho 889, 265 P.3d 502 (2011).

56-218A. Medical assistance liens during life of recipient. —

(1) The department may recover and may impose a lien against the real property of any individual prior to his death for medical assistance paid or about to be paid under this chapter on behalf of an individual:

- (a) Who is an inpatient in a nursing facility, intermediate care facility for people with intellectual disabilities, or other medical institution, if such individual is required, as a condition of receiving services in such institution under the state plan, to spend for costs of medical care all but a minimal amount of his income required for personal needs; and
 - (b) With respect to whom the department has determined, after notice and opportunity for hearing, that he cannot reasonably be expected to be discharged from the medical institution and to return home.
- (2) No lien may be imposed on the home of an individual under subsection (1) of this section if any of the following is lawfully residing in such home:
- (a) The spouse of such individual;
 - (b) Such individual's child under age twenty-one (21) years;
 - (c) Such individual's child who is blind or permanently and totally disabled as defined in 42 U.S.C. 1382c; or
 - (d) A sibling of such individual who holds an equity interest in such home and who was residing in such home for a period of at least one (1) year prior to the individual's admission to the medical institution.
- (3)(a) The lien shall be perfected by filing in the office of the secretary of state a notice of lien pursuant to section 45-1904, Idaho Code. The notice of lien shall include, in addition to the information required by section 45-1904, Idaho Code, the amount paid or about to be paid by the department on behalf of the individual, and, if applicable, the fact that the amount of the lien may increase over time.
- (b) The department shall file any notice of lien under this section within ninety (90) days of the final determination of the department, after hearing if any, required in subsection (1)(b) of this section, with the

exception of property against which the department is prevented from filing a lien pursuant to subsection (2) of this section. With respect to the property described in subsection (2) of this section, the department shall file a notice of lien within ninety (90) days after the department is notified in writing that subsection (2) of this section ceases to apply to the property.

(4) Any lien imposed in accordance with subsection (1) of this section shall dissolve upon the individual's discharge from the medical institution and return home.

(5) No recovery shall be made under this section for medical assistance correctly paid except from such individual's estate as defined in subsection (4) of section 56-218, Idaho Code, and subject to subsections (1)(d), (5) and (6) of section 56-218, Idaho Code, or upon sale of the property subject to a lien and may be made only after the death of such individual's surviving spouse, if any, and only at a time:

(a) When he has no surviving child who is under age twenty-one (21) years, or who is blind or permanently and totally disabled as defined in 42 U.S.C. 1382c; or

(b) In the case of a lien on an individual's home under subsection (1) of this section, when none of the following is lawfully residing in such home who has lawfully resided in such home on a continuous basis since the date of the individual's admission to the medical institution:

(i) A sibling of the individual, who was residing in the individual's home for a period of at least one (1) year immediately before the date of the individual's admission to the medical institution; or

(ii) A son or daughter of the individual, who was residing in the individual's home for a period of at least two (2) years immediately before the date of the individual's admission to the medical institution and who establishes to the satisfaction of the state that he or she provided care to such individual which permitted such individual to reside at home rather than in an institution.

(6) The director shall promulgate rules reasonably necessary to implement this section including, but not limited to, rules establishing undue hardship waivers, as provided in section 56-218(7), Idaho Code, and a procedure for notice and opportunity for hearing on the department's determination that an individual cannot reasonably be expected to be discharged from a medical institution and to return home.

History.

I.C., § 56-218A, as added by 1995, ch. 105, § 2, p. 336; am. 1997, ch. 205, § 3, p. 607; am.

2006, ch. 179, § 3, p. 553; am. 2010, ch. 235, § 45, p. 542.

STATUTORY NOTES

Amendments.

The 2006 amendment, by ch. 179, substituted "subsections (1)(d), (5) and (6)" for "subsections (3), (5) and (6)" in subsection (5).

The 2010 amendment, by ch. 235, substituted "people with intellectual disabilities" for "the mentally retarded" in paragraph (1)(a).

Compiler's Notes.

Section 10 of S.L. 1997, ch. 205 read: "Notwithstanding the effective dates specified in section 1 through 9 of this act, nothing in this act shall take effect unless the secretary of state shall certify to the Idaho Code Commission that he has received a sufficient appro-

apriation to provide for the development of the technology required to implement the provisions of this act. If the certification is not made by the twenty-first day after the adjournment sine die of the First Regular Ses-

sion of the Fifty-fourth Idaho Legislature, this act shall be null and void.”
The secretary of state has so certified to the Idaho code commission and, thus, the chapter 205 became effective as prescribed therein.

56-219. Payment for incompetent recipient. — Appointment of guardian for public assistance. — If the recipient is under legal disability, or is incompetent or unable to handle the assistance granted him under this act, and has no other legal guardian, the district court, after due notice and hearing, shall appoint, without fee, on petition of the state department, and with the consent of the recipient’s nearest kin, next friend, natural guardian or custodian, a capable and trustworthy person as his guardian for public assistance, without bond, whose duty it shall be, without compensation, to receive and disburse the recipient’s assistance on his behalf, and to make true and accurate account thereof as often as required by regulation to the state department, and as otherwise provided by law, to the district court. Funds in the hands of such guardian shall be disbursed only for the purposes contemplated by this act, or as directed in the grant thereof.

History.
1941, ch. 181, § 19, p. 379.

STATUTORY NOTES

Compiler’s Notes.
“District court” has been substituted for “probate court” on authority of § 1-103 which provides that probate court shall mean district court or magistrate’s division of the district court.
The term “this act” refers to S.L. 1941, ch.

181, which is compiled as §§ 56-201 to 56-203, 56-206 to 56-208, 56-210, 56-211 to 56-214, 56-215 to 56-217, 56-219 to 56-224, 56-227, and 56-228 to 56-230. The reference probably should be to “this chapter,” being chapter 2, title 56, Idaho Code.

56-220. Payment on death of recipient — Appointment of administrator of public assistance. — In the event of the death of a recipient, leaving little or no estate requiring formal administration, but to whom a check for public assistance has been delivered prior to his death, or for whose interment burial relief has been granted, the district court, without fee, on petition of the state department, and with the consent of the deceased recipient’s nearest kin, next friend, guardian, natural guardian or custodian, after due notice and hearing, shall appoint a capable and trustworthy [trustworthy] person as his administrator for public assistance, without bond, whose duty it shall be, without compensation, to receive and disburse the recipient’s assistance on behalf of the deceased recipient’s estate, making true and accurate account thereof to the state department and the district court. Funds in the hands of such administrator shall be disbursed only for the purposes contemplated by this act, or as directed in the grant thereof.

History.
1941, ch. 181, § 20, p. 379.

STATUTORY NOTES

Compiler's Notes.

"District court" has been substituted for "probate court" in two places on authority of § 1-103 which provides that probate court shall mean district court or magistrate's division of the district court.

The bracketed word "trustworthy" was inserted by the compiler to correct the enacting legislation.

The term "this act" in the last sentence refers to S.L. 1941, ch. 181, which is compiled as §§ 56-201 to 56-203, 56-206 to 56-208, 56-210, 56-211 to 56-214, 56-215 to 56-217, 56-219 to 56-224, 56-227, and 56-228 to 56-230. The reference probably should be to "this chapter," being chapter 2, title 56, Idaho Code.

56-221. Confidential character of public assistance records. —

The rule-making power of the state department shall include the power to establish and enforce reasonable rules and regulations governing the custody, use and preservation of the records, papers, files and communications of the state department. Wherever, under provisions of law, names and addresses of recipients of public assistance are furnished to or held by any state or county official, the names and addresses shall be subject to disclosure according to chapter 3, title 9, Idaho Code; but any exemption from disclosure shall not prevent the furnishing to a state or local law enforcement officer, upon his written request, with the current address of any AFDC recipient if the officer furnishes the state department with such recipient's name and social security account number and proof that such recipient is a convicted fugitive felon or an indicted fugitive felon, or a person for whom a fugitive warrant has been issued, and that the location or apprehension of such felon or person is within the officer's official duties, and that the request is made in the proper exercise of those duties.

History.

1941, ch. 181, § 21, p. 379; am. 1985, ch. 64, § 1, p. 134; am. 1990, ch. 213, § 83, p. 480.

RESEARCH REFERENCES

A.L.R. — Confidentially of records as to recipients of public welfare. 54 A.L.R.3d 768.

56-222. Misuse of public assistance lists and records. — It shall be unlawful, except for purposes directly connected with the administration of public assistance and social services, and in accordance with the rules and regulations of the state department, for any person or persons to disclose, or make use of, or to authorize, knowingly permit, or participate in the use of, any list of names, or any information concerning, persons applying for or receiving such assistance or services, directly or indirectly derived from the records, papers, files or communications of the state or county or subdivisions or agencies thereof, or acquired in the course of the performance of official duties.

History.

1941, ch. 181, § 22, p. 379.

56-223. Public assistance not assignable. — Public assistance

awarded under this act shall not be transferable or assignable, and none of the money paid or payable under this act shall be subject to execution, attachment, or other legal process; except that the department may transfer funds to another public agency in lieu of payments to recipients, said funds to be transferred by such agency to project sponsors for payment as wages to said recipients participating in special work projects.

History.

1941, ch. 181, § 23, p. 379; am. 1969, ch. 30, § 2, p. 51; am. 1997, ch. 30, § 1, p. 54.

STATUTORY NOTES

Compiler’s Notes.

The term “this act” refers to S.L. 1941, ch. 181, which is compiled as §§ 56-201 to 56-203, 56-206 to 56-208, 56-210, 56-211 to 56-214, 56-215 to 56-217, 56-219 to 56-224, 56-227, and 56-228 to 56-230. The reference probably should be to “this chapter,” being chapter 2, title 56, Idaho Code.

Effective Dates.

Section 3 of S.L. 1969, ch. 30 provided that the act should take effect on and after July 1, 1969.

JUDICIAL DECISIONS

Attachment.

Public assistance funds disbursed to medical service providers are not immune to at-

tachment under this section. *Chinchurreta v. Evergreen Mgt., Inc.*, 117 Idaho 588, 790 P.2d 369 (Ct. App. 1989).

56-224. Recovery. — The department may recover the amount of any public assistance obtained by any person who was not entitled thereto. If at any time during the continuance of assistance, the recipient thereof becomes possessed of any property or income in excess of the amount stated in the application, it shall be the duty of the recipient to notify the state department immediately of the receipt or possession of such property or income. Any assistance granted after the recipient has come into possession of such property or income in excess of eligibility standards, may be recovered by the state department.

On the death of a recipient who has received public assistance to which he was not entitled, or who has received public assistance in an amount greater than that to which he was entitled, by reason of possession or having come into possession of resources which he did not disclose to the department, or which had, or which acquired, a greater value than was disclosed, the total amount of such assistance paid to such recipient to which he was not entitled shall be allowed as a preferred claim against the estate of such recipient.

History.

1941, ch. 181, § 24, p. 379; am. 1951, ch. 246, § 5, p. 520; am. 1997, ch. 31, § 1, p. 55.

JUDICIAL DECISIONS

ANALYSIS

Construction.

Recovery of payments.

Construction.

Acts 1951, ch. 246 amending this section relative to recovery by state of public assistance obtained by a person who was not entitled thereto did not repeal Acts 1951, ch. 147 (§ 56-224a) providing for recovery by state of public assistance from real estate of applicants, since subject matter of two acts dealt with different classes of recipients. *Newland v. Child*, 73 Idaho 530, 254 P.2d 1066 (1953).

Recovery of Payments.

Under the common law, no recovery of money paid by the state for old-age assistance was allowable where payment was not made by accident, fraud or mistake. *State ex rel. Nielson v. Lindstrom*, 68 Idaho 226, 191 P.2d 1009 (1948).

The recovery provisions have nothing to do with the determination of the eligibility of any applicant for assistance; whether an applicant will or will not leave an estate when he dies makes no difference. *State ex rel. Nielson v. Lindstrom*, 68 Idaho 226, 191 P.2d 1009 (1948).

The grant of old-age benefits under this law appears to be unconditional as far as the recipient is concerned. It creates no obligation on his part to repay public assistance to which he was lawfully entitled, and it contains no provisions which condition the grant on either the nonownership of property or the ownership of less than a prescribed minimum of property. *State ex rel. Nielson v. Lindstrom*, 68 Idaho 226, 191 P.2d 1009 (1948).

RESEARCH REFERENCES

C.J.S. — 81 C.J.S., Social Security and Public Welfare, § 199 to 205.

56-224a, 56-224b. Recovery from recipients who own real property — Authorizing director to compromise or release claims and liens. [Repealed.]

STATUTORY NOTES

Compiler's Notes.

These sections, which comprised S. L. 1951, ch. 147, § 1, p. 339; am. 1963, ch. 85, § 1, p. 279; 1963, ch. 99, § 1, p. 317; am. 1972, ch.

196, § 10, p. 483; am. 1972, ch. 388, § 1, p. 1119; am. 1974, ch. 23, § 164, p. 633, were repealed by S. L. 1976, ch. 250, § 2, effective July 1, 1977.

56-224c. Old age assistance recipients — Liens and indebtedness excused. [Repealed.]

STATUTORY NOTES

Compiler's Notes.

This section, which comprised 1976, ch. 250, § 1, p. 856, was repealed by S.L. 1988,

ch. 49, § 2, as amended by S.L. 1988, ch. 360, § 1.

56-225. Request for notice of transfer or encumbrance of real property — Rulemaking. — (1) When an individual receives medical assistance subject to recovery under this chapter and the individual is the holder of record title to real property or the purchaser under a land sale contract, the department of health and welfare may present to the county recorder for recording in the grants and conveyances records of a county a request for notice of transfer or encumbrance of the real property. The department shall adopt a rule providing prior notice and hearing rights to the record titleholder or purchaser under a land sale contract.

(2) The department shall present to the county recorder for recording a

termination of request for notice of transfer or encumbrance when, in the judgment of the department, it is no longer necessary or appropriate for the department to monitor transfers or encumbrances related to the real property.

(3) The department shall adopt by rule a form for the request for notice of transfer or encumbrance and the termination of request for notice of transfer or encumbrance that, at a minimum:

- (a) Contains the name of the public assistance recipient, and the spouse of such public assistance recipient, if any, and a departmental case identifier or other appropriate information that links the individual who is the holder of record title to real property or the purchaser under a land sale contract to the individual's public assistance records;
- (b) Contains the legal description of the real property;
- (c) Contains a mailing address for the department to receive the notice of transfer or encumbrance; and
- (d) Complies with the requirements for recording in section 55-805, Idaho Code, for those forms intended to be recorded.

(4) The request for notice of transfer or encumbrance described in this section does not affect title to real property and is not a lien on, encumbrance of, or other interest in, the real property.

History.

I.C., § 56-225, as added by 2010, ch. 90,
§ 2, p. 174.

STATUTORY NOTES

Prior Laws.

Former § 56-225, which comprised 1941,
ch. 181, § 24-a as added by S.L. 1947, ch. 237,

§ 4, was repealed by § 1 of S.L. 1949, ch. 12,
p. 13.

56-226. Medicaid fraud control unit. — (1) There is hereby established in the office of the attorney general the medicaid fraud control unit which shall have the authority and responsibilities as set forth in this section.

(2) Notwithstanding the authority and responsibility granted to the director of the department to provide for fraud control in other aspects of public assistance and public health programs, the medicaid fraud control unit shall have the authority and responsibility to conduct a statewide program for the investigation and prosecution of violations of all applicable Idaho laws pertaining to fraud in the administration of the medicaid program, the provision of medical assistance and in the activities of providers of medical assistance and services under the state plan. Further, upon approval of the inspector general of the relevant federal agency, the office of the attorney general shall have the authority and responsibility to investigate and to prosecute violations of any aspect of the provision of health care services and activities of providers of such services under any federal health care program as defined in 42 U.S.C. section 1320(a)-7b(f)1, if the suspected fraud or violation of law in such investigation or prosecution is substantially related to the state plan. The medicaid fraud control unit

shall be under the exclusive control of the attorney general and be separate and distinct from the department. No official from the department shall have authority to review or override the prosecutorial decisions made by the medicaid fraud control unit.

(3) The medicaid fraud control unit shall also:

(a) Review complaints of abuse or neglect of medicaid recipients in health care facilities which receive payment pursuant to the state plan and may review complaints of the misappropriation of patients' private funds in such facilities; and

(b) Review complaints of abuse or neglect of medicaid recipients residing in a board and care facility.

(4) The medicaid fraud control unit shall attempt to collect or refer to the department for collection overpayments that are made to providers of facilities under the state plan or under any federal health care program to health care facilities that are the result of fraudulent acts and that are discovered by the medicaid fraud control unit in carrying out its responsibilities under this section. Notwithstanding any other provision of Idaho Code, all funds collected by the medicaid fraud control unit in accordance with this subsection (4) shall be deposited into the state general fund.

(5) The office of the attorney general shall employ such auditors, attorneys, investigators and other personnel as are necessary to carry out the responsibilities of the medicaid fraud control unit as set forth under this section.

(6) The office of the attorney general shall submit to the secretary of the federal department of health and human services applications and reports containing such information as is determined by the secretary by regulation to be necessary to meet the requirements of subchapter XIX, chapter 7, title 42, U.S.C.

(7) In carrying out its duties and responsibilities under this section, the medicaid fraud control unit may:

(a) Request and receive the assistance of any prosecutor or law enforcement agency in the investigation and prosecution of any violation of any applicable Idaho laws pertaining to fraud in the administration of the medicaid program, the provision of medical assistance and in the activities of providers of medical assistance and services under the state plan;

(b) Enter upon the premises of any provider participating in the medicaid program to:

(i) Examine all accounts and records that are relevant in determining the existence of fraud in the medicaid program;

(ii) Investigate alleged abuse or neglect of medicaid recipients; or

(iii) Investigate alleged misappropriation of patients' private funds. The accounts or records of a nonmedicaid recipient may not be reviewed by, or turned over to the medicaid fraud control unit without the patient's written consent or a court order; and

(c) Notwithstanding any other provision of law, upon written request have full access to all records held by a medicaid provider, or by any other person on his or her behalf, that are relevant to the determination of the:

(i) Existence of civil violations or criminal offenses under this chapter or related offenses;

- (ii) Existence of medicaid recipient abuse, mistreatment or neglect; or
- (iii) Theft of medicaid recipient funds.

No person holding such records shall refuse to provide the medicaid fraud control unit access to such records for the purposes described in this section on the basis that release would violate the medicaid recipient's right of privacy or privilege against disclosure or use or any professional or other privilege or right.

(8) The medicaid fraud control unit shall safeguard the privacy rights of medicaid recipients to avoid unnecessary disclosure of personal information concerning named medicaid recipients. The medicaid fraud control unit may transmit such information that it deems appropriate to the department and to other agencies concerned with the regulation of health care facilities or health professionals.

(9) The attorney general shall have the authority to adopt rules necessary to implement the duties and responsibilities assigned to the medicaid fraud control unit under this section.

(10) As used in this section:

(a) "Board and care facility" means a provider of medicaid services in a residential setting which receives payment from or on behalf of two (2) or more unrelated adults who reside in such facility, and for whom one (1) or more of the following is provided:

(i) Nursing care services provided by, or under the supervision of, a registered nurse, licensed practical nurse or certified nurses aide; or

(ii) A substantial amount of personal care services that assist residents with the activities of daily living, including personal hygiene, dressing, bathing, eating, toileting, ambulation, transfer of positions, self-medication, body care, travel to medical services, essential shopping, meal preparation, laundry and housework.

(b) "Department" means the Idaho department of health and welfare.

(c) "Director" means the director of the Idaho department of health and welfare.

(d) "Medicaid" means Idaho's medical assistance program.

(e) "Provider" means any individual, partnership, association, corporation or organization, public or private, which provides residential or assisted living services, certified family home services, nursing facility services or services offered pursuant to medical assistance.

(f) "Recipient" means an individual determined eligible by the director for the services provided in the state plan for medicaid.

(g) "State plan" means the Idaho state plan pursuant to subchapter XIX, chapter 7, title 42 U.S.C.

History.

I.C., § 56-226, as added by 2007, ch. 341,
§ 4, p. 1000.

STATUTORY NOTES

Cross References.

Attorney general, § 67-1401 et seq.
State general fund, § 67-1205.

Prior Laws.

Former § 56-226, which comprised I.C., § 56-226, as added by S.L. 1947, ch. 237, § 4, was repealed by § 1 of S.L. 1949, ch. 12, p. 13.

Federal References.

Subchapter XIX, chapter 7, title 42 U.S.C., referred to in subsection (6) and paragraph (10)(g), is codified as 42 U.S.C.S. § 1396 et seq.

56-227. Fraudulent acts — Penalty. — (1) Whoever knowingly obtains, or attempts to obtain, or aids or abets any person in obtaining, by means of a willfully false statement or representation, material omission, or fraudulent devices, public assistance, relief or federal-aid assistance to which he is not entitled, or in an amount greater than that to which he is justly entitled, shall be punished in the same manner and to the same extent as for larceny or theft of the money or value of the public assistance so obtained or attempted to be so obtained.

(2) Whoever sells, conveys, mortgages or otherwise disposes of his property, real or personal, or conceals his income or resources, for the purpose of rendering him eligible for any form of assistance, theretofore or thereafter applied for, to which he would not otherwise be entitled, shall be punished in the same manner and to the same extent as for larceny or theft of the money or value of the assistance so obtained or so attempted to be obtained.

(3) Every person who knowingly aids or abets any person in selling, conveying, mortgaging or otherwise disposing of his property, real or personal, or in concealing his income or resources for the purpose of rendering him eligible for any form of public assistance or relief, theretofore or thereafter applied for and received, to which he would not otherwise be entitled, shall be punished in the same manner and to the same extent as for larceny or theft of the money or value of the public assistance or relief so obtained or attempted to be obtained.

(4) For the purpose of this section public assistance shall include the specific categories of assistance for which provision is made in any federal or state law existing or hereafter enacted by the congress of the United States or the state of Idaho by which payments are made from the federal government to the state in aid or in respect to payment by the state for welfare purposes to any category of needy person and any other program of assistance for which provision for federal or state funds for aid may from time to time be made.

(5) The state department of health and welfare shall establish and operate a fraud control program to investigate suspected fraud relating to applications for public assistance benefits, and public assistance benefits received by individuals or entities. Such activities shall be those which do not fall under the authority of the medicaid fraud control unit as provided in section 56-226, Idaho Code. The department shall establish a procedure to coordinate information with prosecuting attorneys to prosecute offenders who commit fraudulent acts pursuant to this chapter.

History.

1941, ch. 181, § 24-c, as added by 1943, ch. 119, § 2, p. 228; am. 1974, ch. 233, § 9, p. 1590; am. 1981, ch. 194, § 1, p. 343; am. 1988,

ch. 246, § 1, p. 480; am. 2002, ch. 369, § 2, p. 1038; am. 2007, ch. 341, § 5, p. 1000; am. 2008, ch. 188, § 1, p. 592.

STATUTORY NOTES

Amendments.

The 2007 amendment, by ch. 341, deleted subsection (e), which read: “The state department of health and welfare shall establish and operate a fraud control program as permitted by section 416 of the social security act as now or hereafter amended.” See § 56-226.

The 2008 amendment, by ch. 188, changed the designation scheme in this section; in subsection (4), substituted “public assistance” for “federal-aid assistance,” twice inserted “or

state” following the first and last occurrences of “federal,” and inserted “or the state of Idaho”; and added subsection (5).

Effective Dates.

Section 24-d of S.L. 1941, ch. 181, as added by S.L. 1943, ch. 119, § 2 declared an emergency. Approved March 2, 1943.

Section 2 of S.L. 1981, ch. 194 declared an emergency. Approved March 31, 1981.

JUDICIAL DECISIONS

ANALYSIS

Separate offenses.
Sentence.

Separate Offenses.

Trial court did not err in refusing to treat 35 separate counts of welfare fraud as a single crime where defendant was required to complete a new aid to families with dependent children (AFDC) application form for each welfare check, since the appropriation of different sums of money on separate occasions by fresh affirmative acts constitutes the commission of separate offenses. *State v. Gilbert*, 112 Idaho 805, 736 P.2d 857 (Ct. App. 1987).

While a prosecutor may consolidate several misdemeanors into a single felony, it does not

follow that he must consolidate several felonies into one larger felony. *State v. Gilbert*, 112 Idaho 805, 736 P.2d 857 (Ct. App. 1987).

Sentence.

Sentence of five years with a two-year minimum period of confinement for welfare fraud was reasonable, where defendant received food stamps without reporting income received from worker’s compensation benefits, and where defendant had a lengthy criminal record. *State v. Baxter*, 124 Idaho 476, 860 P.2d 679 (Ct. App. 1993).

RESEARCH REFERENCES

A.L.R. — Criminal liability for wrongfully obtaining unemployment benefits. 80 A.L.R.3d 1280.

Criminal liability under state laws in connection with application for, or receipt of, public welfare payments. 22 A.L.R.4th 534.

56-227A. Provider fraud — Criminal penalty. — It shall be unlawful for any provider or person, knowingly, with intent to defraud, by means of a wilfully false statement or representation or by deliberate concealment of any material fact, or any other fraudulent scheme or device, to:

(a) present for allowance or payment any false or fraudulent claim for furnishing services or supplies; or

(b) attempt to obtain or to obtain authorization for furnishing services or supplies; or

(c) attempt to obtain or to obtain compensation from public funds greater than that to which he is legally entitled for services or supplies furnished or purportedly furnished.

Any provider or person who violates the provisions of this section shall be

guilty of a felony. Nothing in this section shall prohibit or preclude a provider or person from being prosecuted under any other provision of the criminal code.

History.

I.C., § 56-227A, as added by 1977, ch. 226,
§ 2, p. 673.

JUDICIAL DECISIONS**Sentence.**

In prosecution where defendant was found guilty of 9 counts of provider fraud, unified sentence of five years, with 4-year minimum terms of imprisonment on counts 1 to 4, and concurrent 5-year indeterminate prison terms on counts 5 through 9, with the latter sentences running consecutively to the sentences on counts 1 through 4, so that defendant would have to serve at least 4 years in prison

before he would be eligible for parole, were not excessive since defendant had a prior criminal history, at the time of sentencing he continued to make excuses for the crimes and to blame others for his conviction, and, while the offense of which defendant was convicted were not violent, they were nevertheless serious offenses which society has pronounced an interest in deterring. *State v. Silverson*, 130 Idaho 283, 939 P.2d 859 (Ct. App. 1997).

56-227B. Provider fraud — Damages. — Any provider who knowingly with intent to defraud by means of false statement or representation, obtains compensation from public funds greater than that to which he is legally entitled for services or supplies furnished or purportedly furnished shall be liable for civil damages equal to three (3) times the amount by which any figure is falsely overstated. The director of the department of health and welfare or the attorney general shall have the right to cause legal action to be taken for the recovery of such damages when persuaded that a reimbursement claim for payment is falsely overstated. The burden of proof for such recovery action shall be that which is used in other civil actions for the recovery of damages. The remedy provided by this section shall be in addition to any other remedy provided by law.

If any provider of services or supplies is required to refund or repay all or part of any payment received by said provider under the provisions of this section, said refund or repayment shall bear interest from the date payment was made to such provider to the date of said refund or repayment. Interest shall accrue at the rate of ten percent (10%) per annum. The prevailing party in an action, under this section shall be awarded costs and reasonable attorney's fees incurred in bringing or defending the action. Notwithstanding any other provision of the Idaho Code, all costs and attorney's fees awarded to the department of health and welfare or the attorney general pursuant to this section shall be deposited into the state general fund.

History.

I.C., § 56-227B, as added by 1977, ch. 226,
§ 3, p. 673; am. 2007, ch. 341, § 6, p. 1000.

STATUTORY NOTES**Cross References.**

Attorney general, § 67-1401 et seq.
State general fund, § 67-1205.

Amendments.

The 2007 amendment, by ch. 341, in the second sentence in the first paragraph, in-

serted "or the attorney general"; and in the last paragraph, rewrote the next-to-last sentence, which formerly read: "If, as a result of such action, the provider of services or supplies is not required to refund or repay any payment received by said provider under the terms of this section, reasonable attorney's

fees shall be allowed the provider," and added the last sentence.

Effective Dates.

Section 4 of S.L. 1977, ch. 226 declared an emergency. Approved March 31, 1977.

56-227C. Subpoena power. — (1) The director, or his authorized representative, and the director of the Idaho state police or his authorized representative, for the purposes contemplated by this act, have power to issue subpoenas, compel the attendance of witnesses, administer oaths, certify to official acts, take depositions within and without the state of Idaho, as now provided by law, compel the production of pertinent books, payrolls, accounts, papers, records, documents and testimony. If a person in attendance before such director or his authorized representative refuses, without reasonable cause, to be examined or to answer a legal and pertinent question, or to produce a book or paper or other evidence when ordered so to do by the director or his authorized representative, said director or his authorized representative may apply to the judge of the district court of the county where such person is in attendance, upon affidavit for an order returnable in not less than two (2) or more than five (5) days, directing such person to show cause before such judge, or any other judge of such district, why he should not be punished for contempt; upon the hearing of such order, if the judge shall determine that such person has refused, without reasonable cause or legal excuse, to be examined or to answer a legal or pertinent question, or to produce a book or paper which he was ordered to bring or produce, he may forthwith punish the offender as for contempt of court.

(a) If any person asks to be excused from attending or testifying or from producing any books, payrolls, accounts, papers, records, documents or other evidence in connection with any investigation or inquiry or upon any hearing before any officer so authorized pursuant to this subsection (1), or in any proceeding or action before any court upon a charge or violation of this subsection (1), on the ground that the testimony or evidence required of him may tend to incriminate him or subject him to penalty or forfeiture, and if such person, notwithstanding such request, is directed to give such testimony or produce such evidence, the person must, if so directed by the director or his authorized representative, comply with such direction.

(b) After complying, and if, but for this subsection (1), the person would have been privileged to withhold the answer given or the evidence produced by him, then the answer, the evidence and any information directly or indirectly derived from the answer or evidence, may not be used against the compelled person in any manner in a criminal case, except that the person may nevertheless be prosecuted or subjected to penalty or forfeiture for any perjury, false swearing or contempt committed in answering or failing to answer or in producing or failing to produce evidence in accordance with the order. Such evidence may be used in the refusal, suspension or revocation of any license, permission or authority conferred, or to be conferred, pursuant to Idaho Code.

(2) The attorney general or any prosecuting attorney or the designated agent of either shall have the authority to issue subpoenas to an enrolled or

formerly enrolled provider of services pursuant to the medicaid program to compel production of any books, payrolls, accounts, papers, records or documents that are required to be maintained under the medicaid provider agreement executed by such provider or formerly enrolled provider as may be relevant to an investigation of fraud or other crime directly related to the use of medicaid program funds or services provided through the medicaid program that are not already in the possession of the director of the department of health and welfare or his designated agent. The attorney general or any prosecuting attorney or the designated agent of either may also compel testimony by the custodian of the items subpoenaed concerning the production and authenticity of those items. Subpoenas for records or information which are not required to be maintained under a provider agreement shall only be issued through subpoena powers in judicial proceedings. A subpoena under this subsection (2) shall describe the items required to be produced with particularity and prescribe a return date of a reasonable period of time within which the items can be assembled and made available to the attorney general or any prosecuting attorney or the designated agent of either.

(3) Subpoenas issued pursuant to this section shall be served and witness fees and mileage paid as allowed in civil cases in the district courts of this state.

(4) Investigators employed by the attorney general for the investigation and prosecution of providers of services pursuant to the medicaid program shall have all the authority given by statute to peace officers of the state of Idaho, including, but not limited to, authority to obtain, serve and execute warrants of arrest and warrants of search and seizure.

History.

I.C., § 56-227C, as added by 1978, ch. 153,

§ 1, p. 336; am. 2000, ch. 469, § 128, p. 1450; am. 2007, ch. 341, § 7, p. 1000.

STATUTORY NOTES**Cross References.**

Attorney general, § 67-1401.

Contempt, § 7-601 et seq.

Idaho state police, § 67-2901 et seq.

Compiler's Notes.

The term "this act" in subsection (1) refers to S.L. 1978, ch. 153, which is codified as this section.

Amendments.

The 2007 amendment, by ch. 341, rewrote the section to the extent that a detailed comparison is impracticable.

Effective Dates.

Section 2 of S.L. 1978, ch. 153 declared an emergency. Approved March 17, 1978.

OPINIONS OF ATTORNEY GENERAL

Refusal to provide records or documents on the grounds that such records or documents are exempt from disclosure pursuant to the Idaho public records act, chapter 3, title 9, Idaho Code, does not constitute "reasonable cause or legal excuse" for failing to comply with the department of health and welfare's administrative subpoena. OAG 95-6.

Public records that are exempt from public disclosure are nevertheless subject to disclosure in a judicial or administrative proceeding, if they are subject to disclosure under the laws or rules of evidence and of discovery governing those proceedings. OAG 95-6.

56-227D. Federal food stamps, also known as supplemental nutrition assistance program — Unauthorized use — Exception — Definition. — (1) It is a misdemeanor for any person to buy, receive, sell, give away, dispose of, exchange or barter any federal food stamp benefits of a value less than one hundred dollars (\$100).

(2) It is a felony for any person to buy, receive, sell, give away, dispose of, exchange or barter any federal food stamp benefits of a value of one hundred dollars (\$100) or more.

(3) This section does not apply to any person buying, receiving, selling, giving away, disposing of, exchanging or bartering any federal food stamp benefits subsequent to the redemption of such stamps in the manner provided by state or federal law.

(4) As used in this section, federal food stamp benefits refers to food stamp benefits issued in any form by the United States department of agriculture or its duly authorized agent for the sole purpose of purchasing food.

(5) This section shall be enforced by the director of the department of health and welfare in cooperation with local law enforcement and prosecuting agencies. Such enforcement shall not be the responsibility of the medicaid fraud control unit as provided in section 56-226, Idaho Code.

History. I.C., § 56-227D, as added by 1981, ch. 193, § 1, p. 342; am. 2007, ch. 341, § 8, p. 1000; am. 2011, ch. 193, § 1, p. 554; am. 2012, ch. 260, § 1, p. 722.

STATUTORY NOTES

Cross References.

Penalty for felony when not otherwise provided, § 18-112.

Penalty for misdemeanor when not otherwise provided, § 18-113.

Amendments.

The 2007 amendment, by ch. 341, changed the subsection designations and added subsection (5).

The 2011 amendment, by ch. 193, throughout subsections (1) through (4), substituted “food stamp benefits” for “food stamps”; and, in subsection (4), substituted “issued in any form” for “issued for food” and added “for the sole purpose of purchasing food.”

The 2012 amendment, by ch. 260, inserted “also known as supplemental nutrition assistance program” in the section heading, substituted “a value less than one hundred dollars (\$100)” for “a value of one hundred fifty dollars (\$150) or less, except for the eligible foods for which they are issued” at the end of subsection (1), and substituted “a value of one hundred dollars (\$100) or more” for “a value exceeding one hundred fifty dollars (\$150), except for the eligible foods for which they are issued” at the end of subsection (2).

Effective Dates.

Section 2 of S.L. 1981, ch. 193, declared an emergency. Approved March 31, 1981.

56-227E. Obstruction of investigation. — (1) An obstruction of investigation consists of knowingly:

- (a) Providing false information to, or knowingly withholding information from, any person requesting such information if that person is authorized to investigate a violation of this chapter or to enforce the criminal or civil remedies of this chapter where that information is properly requested and is material to the investigation or enforcement; or
- (b) Altering any document or record required to be retained pursuant to this chapter or any rule issued by the department of health and welfare,

when the alteration is intended to mislead an investigation and concerns information material to that investigation.

(2) Whoever commits an obstruction of investigation shall be guilty of a felony and shall be sentenced pursuant to the provisions of section 18-112, Idaho Code.

History.

I.C., § 56-227E, as added by 2007, ch. 341,
§ 9, p. 1000.

STATUTORY NOTES

Prior Laws.

Former § 56-227E, which comprised I.C.,
§ 56-227E, as added by 2000, ch. 360, § 1, p.

1197; am. 2001, ch. 47, § 1, p. 87, became null
and void on and after June 30, 2002, pursuant
to § 2 of S.L. 2001, ch. 47.

56-227F. Public assistance benefit cards — Prohibited uses. —

(1) Any recipient of public assistance is prohibited from using public assistance benefit cards or cash obtained with public assistance benefit cards:

- (a) For the purpose of participating in any of the activities described under chapters 38 and 49, title 18, Idaho Code, or authorized pursuant to any state-tribal gaming compact under section 67-429A, Idaho Code;
- (b) For the purpose of pari-mutuel betting authorized under chapter 25, title 54, Idaho Code;
- (c) To purchase lottery tickets or shares authorized under chapter 74, title 67, Idaho Code;
- (d) For the purpose of participating in or purchasing tattoo, branding or body piercing services as defined in section 18-1523, Idaho Code;
- (e) To purchase cigarettes as defined in section 39-7802(d), Idaho Code, or tobacco products as defined in section 39-5702(13), Idaho Code;
- (f) To purchase any items regulated under title 23, Idaho Code;
- (g) For the purpose of adult entertainment at venues with performances that contain sexually oriented material where minors under the age of eighteen (18) are prohibited; or
- (h) For the purpose of purchasing or participating in any activities in any location listed in subsection (2) of this section.

(2) The following businesses are required to comply with the provisions of this section:

- (a) Any establishment or business licensed under chapter 9, title 23, Idaho Code;
- (b) State liquor stores defined under section 23-902, Idaho Code, with the exception of special distributors as referenced in chapter 3, title 23, Idaho Code;
- (c) Any business or agency that issues or underwrites bail bonds as defined in section 41-1038(3), Idaho Code;
- (d) Gambling establishments licensed under Idaho law;
- (e) Any business or establishment that offers tattoo, body piercing or branding services as defined in section 18-1523, Idaho Code;
- (f) Adult entertainment venues with performances that contain sexually

oriented material where minors under the age of eighteen (18) are prohibited; and

(g) Any establishment where persons under the age of eighteen (18) are not permitted.

(3) The department shall notify any business determined to be in violation of the provisions of subsection (2) of this section and the licensing authority of any such business, if applicable, that such business has continued to allow the use of a public assistance benefit card in violation of subsection (2) of this section. The department may require the Idaho quest electronic benefits transfer (EBT) card business identification number (BIN) be disabled at any business found to be in violation of subsection (2) of this section. Any business in violation of subsection (2) of this section may also be required to deny all public assistance cash transactions made with an Idaho quest EBT card at any automated teller machine (ATM) located in their establishment. All costs associated with disabling the BIN and ATM will be the responsibility of such business owner.

(4) Only the recipient, an eligible member of the recipient's household or the recipient's authorized representative may use a public assistance benefit card or the benefit, and such use shall only be for the respective benefit program purposes. The recipient shall not sell, attempt to sell, exchange or donate a public assistance benefit card or any benefits to any other person or entity.

(5) A violation of subsection (1) or (4) of this section by a recipient constitutes a misdemeanor.

(a) The department shall notify all recipients of public assistance benefit cards that any violation of subsection (1) or (4) of this section could result in legal proceedings and forfeiture of all cash public assistance.

(b) Whenever the department has confirmed that a person has violated subsection (1) or (4) of this section, the department shall notify the person in writing that the violation could result in legal proceedings and forfeiture of all cash public assistance.

(6) As used in this section, "public assistance" or "public assistance benefit" means benefits provided to a recipient pursuant to the temporary assistance for families in Idaho (TAFI) program on an Idaho quest EBT card account.

(7) This section shall be enforced by the director of the department of health and welfare in cooperation with local law enforcement and prosecuting agencies.

History.

I.C., § 56-227F, as added by 2012, ch. 182,
§ 1, p. 484.

STATUTORY NOTES

Compiler's Notes.

The abbreviations enclosed in parentheses
so appeared in the law as enacted.

56-228. Limitations of act. — All assistance awarded under this act

shall be deemed to be awarded and to be held subject to the provisions of any amending or repealing act that may hereafter be passed, and no recipient shall have any claim for compensation, or otherwise, by reason of his assistance being affected in any way by any amending or repealing act.

History.

1941, ch. 181, § 25, p. 379.

STATUTORY NOTES**Compiler's Notes.**

The term "this act" refers to S.L. 1941, ch. 181, which is compiled as §§ 56-201 to 56-203, 56-206 to 56-208, 56-210, 56-211 to 56-214, 56-215 to 56-217, 56-219 to 56-224, 56-227, and 56-228 to 56-230. The reference probably should be to "this chapter," being chapter 2, title 56, Idaho Code.

Section 26 of S.L. 1941, ch. 181 provided: "Chapters 104 of the 1935 Session Laws, 216 of the 1937 Session Laws and Sections 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15 and 16 and Section 18 of Chapter 182 and Chapter 270 of the 1939 Session Laws and all other acts and parts of acts in conflict herewith are hereby repealed."

56-229. Separability. — If any portion of this act is for any reason held to be unconstitutional, such decision shall not affect the validity of the main portions thereof.

History.

1941, ch. 181, § 27, p. 379.

STATUTORY NOTES**Compiler's Notes.**

The term "this act" refers to S.L. 1941, ch. 181, which is compiled as §§ 56-201 to 56-203, 56-206 to 56-208, 56-210, 56-211 to 56-

214, 56-215 to 56-217, 56-219 to 56-224, 56-227, and 56-228 to 56-230. The reference probably should be to "this chapter," being chapter 2, title 56, Idaho Code.

56-230. Short title. — This act may be cited as the "Public Assistance Law."

History.

1941, ch. 181, § 28, p. 379.

STATUTORY NOTES**Compiler's Notes.**

The term "this act" refers to S.L. 1941, ch. 181, which is compiled as §§ 56-201 to 56-203, 56-206 to 56-208, 56-210, 56-211 to 56-214, 56-215 to 56-217, 56-219 to 56-224, 56-227, and 56-228 to 56-230. The reference

probably should be to "this chapter," being chapter 2, title 56, Idaho Code.

Effective Dates.

Section 29 of S.L. 1941, ch. 181 declared an emergency. Approved March 15, 1941.

56-231. Public assistance in locating and determining the financial resources of parents and other persons liable for support of dependents. — To assist in locating and determining the financial resources of parents who have deserted their children and other persons liable for support of dependents, the department of health and welfare and county prosecuting attorneys may request and shall receive information from the records of all departments, boards, bureaus or other agencies of this state,

and may request and may receive information from businesses and financial entities; and the same are authorized to provide such information as is necessary for this purpose, notwithstanding any provisions of chapter 3, title 9, Idaho Code, making the information exempt from disclosure. There shall be no legal sanctions imposed against a business or financial entity which refuses to provide requested information, unless the business or financial entity has been served with a subpoena requesting the information. Only information directly bearing on the identity, financial resources, and whereabouts of a person owing or asserted to be owing an obligation of support shall be requested and used or transmitted by the department of health and welfare and county prosecuting attorneys pursuant to the authority conferred by this act. The department of health and welfare and county prosecuting attorneys may make such information available only to public officials and agencies of this state, other states and the political subdivisions of this state and other states seeking to locate parents who have deserted their children and other persons liable for support of dependents for the purpose of enforcing their liability for support.

History.

1965, ch. 42, § 1, p. 65; am. 1972, ch. 196, § 11, p. 483; am. 1974, ch. 23, § 165, p. 633;

am. 1986, ch. 152, § 1, p. 438; am. 1990, ch. 213, § 84, p. 480.

STATUTORY NOTES

Compiler's Notes.

The term "this act" refers to S.L. 1965, ch. 42, which is compiled as this section.

Effective Dates.

Section 2 of S.L. 1965, ch. 42 provided that the act should take effect from and after March 1, 1965.

Section 111 of S.L. 1990, ch. 213 as amended by § 16 of S.L. 1991, ch. 329, provided that §§ 3 through 45 and 48 through 110 of the act should take effect July 1, 1993 and that §§ 1, 2, 46 and 47 should take effect July 1, 1990.

56-232. Medical assistance programs — Contracts with independent agencies for administration of programs. — The agency, board, or governmental unit of the state of Idaho designated as the responsible agency for the administration of medical assistance programs which involve the participation of the federal government under the provisions of title XIX of the Social Security Act of 1965, as amended, is authorized to enter into contracts or agreements with life insurance companies qualified in this state, hospital or medical service corporations qualified in this state, or other appropriate independent organizations or corporations for the administration of such medical assistance programs, subject however, to the rules and regulations of the designated responsible governmental agency. Any such contract shall, among other provisions, set forth the term, consideration to be paid for such service, the general duties and procedures of the contract, accounting procedures, and such other matters as may be required to insure the proper administration of the benefits provided by the statutes of Idaho and the rules and regulations authorized therein with reference to the programs established by title XIX of the Social Security Act of 1965, as amended. Such contract shall be signed by the governor of the state of Idaho on behalf of the state.

History.

1969, ch. 201, § 1, p. 588.

STATUTORY NOTES**Federal References.**

Title XIX of the social security act, referred

to in this section, is codified as 42 U.S.C.S. § 1396 et seq.

56-233. Procedure for disbursement of funds to recipients. — Notwithstanding the provisions of section 56-405 and section 56-406, Idaho Code, any such contract entered into between the designated and responsible governmental agency and an independent contractor for the administration of such medical assistance programs may set forth therein a procedure for the disbursement of funds to the recipients of such program and, upon the approval of the procedures so established by the state controller, disbursements of funds shall be made by the state of Idaho to the independent contractor and by the independent contractor to the recipients in accordance with the procedures so established. Procedures established by contract for the disbursement of funds shall have reference only to such funds as involve the participation of the federal government under the provisions of title XIX of the Social Security Act of 1965, as amended.

History.

1969, ch. 201, § 2, p. 588; am. 1994, ch. 180, § 107, p. 420.

STATUTORY NOTES**Cross References.**

State controller, § 67-1001 et seq.

Federal References.

Title XIX of the social security act, referred to in this section, is codified as 42 U.S.C.S. § 1396 et seq.

Effective Dates.

Section 241 of S.L. 1994, ch. 180 provided

that such act should become effective on and after the first Monday in January, 1995 [January 2, 1995] if the amendment to the Constitution of Idaho changing the name of the state auditor to state controller [1994 S.J.R. No. 109, p. 1493] was adopted at the general election held on November 8, 1994. Since such amendment was adopted, the amendment to this section by § 107 of S.L. 1994, ch. 180 became effective January 2, 1995.

56-233a. Costs of nonfederal share of skilled and intermediate nursing care for medically eligible persons — Source of payment. [Repealed.]

STATUTORY NOTES**Compiler's Notes.**

This section, which comprised 1974, ch. 93, § 1, p. 1192; am. 1978, ch. 50, § 1, p. 95; am.

1979, ch. 316, § 1, p. 850, was repealed by S.L. 1981, ch. 159, § 2, effective January 1, 1982.

56-234. Legislative intent. — It is hereby declared by the legislature that, in keeping with current state and national goals and best practice, increasing numbers of persons with developmental disabilities are being discharged to community facilities or private residences as an alternative to large public institutions licensed as intermediate care facilities for persons

with intellectual disabilities. Such deinstitutionalization is highly desirable since it can lead to a fuller, richer and more independent life for persons with developmental disabilities. Recognizing that every individual has unique needs and differing abilities, the purpose of the following provisions is to clarify the department of health and welfare's duties and responsibilities with respect to persons with developmental disabilities, who are or may become residents of the southwest Idaho treatment center, a public institution licensed for nine (9) or more beds as an intermediate care facility for persons with intellectual disabilities. The following provisions shall be liberally construed to accomplish these purposes.

History.

I.C., § 56-234, as added by 2011, ch. 101,
§ 1, p. 256; am. 2012, ch. 107, § 7, p. 284.

STATUTORY NOTES

Amendments.

The 2012 amendment, by ch. 107, substituted "southwest Idaho treatment center" for "Idaho state school and hospital".

comprised I.C., § 56-234, as added by 2006, ch. 437, § 1, p. 1322, became null and void and of no force and effect on and after July 1, 2009, pursuant to S.L. 2006, ch. 437 § 2.

Compiler's Notes.

Former § 56-234, Caregiver support, which

56-234A. Definitions. — As used in sections 56-234 through 56-235E, Idaho Code:

(1) "Admission-discharge committee" means an interdisciplinary team of at least three (3) individuals designated by the director to evaluate persons as required by the provisions of sections 56-234 through 56-235E, Idaho Code. Each committee member must be specially qualified by training and experience in the diagnosis and treatment of persons with a developmental disability.

(2) "Certified family home" means a family home as defined in section 39-3502, Idaho Code.

(3) "Community facility" means a privately owned or operated nursing facility, intermediate care facility for persons with intellectual disabilities, licensed residential or assisted living facility, other organization licensed, recognized, or certified by the department to provide care or treatment to persons with developmental disabilities, or a publicly owned or operated facility licensed for eight (8) beds or less as an intermediate care facility for persons with intellectual disabilities.

(4) "Department" means the Idaho department of health and welfare.

(5) "Developmental disabilities" means a chronic disability of a person as defined in section 66-402, Idaho Code.

(6) "Director" means the director of the Idaho department of health and welfare or his designee.

(7) "Discharge" means an admission-discharge committee has determined that there is an available community facility or private residence that is least restrictive, appropriate and consistent with the needs of the individual.

(8) "Medically fragile" means an individual with a developmental disabil-

ity and a chronic medical condition that is characterized by periods of acute exacerbation or potentially life-threatening episodes and that may require frequent hospitalizations or prolonged recuperation periods and ongoing monitoring and assistance by a licensed registered nurse.

(9) "Private residence" means a certified family home or a single family dwelling or apartment in a multiple dwelling or apartment complex that is used by an individual as a place of abode and that is not used for commercial purposes.

(10) "Resident" means an individual who is admitted to or resides at the southwest Idaho treatment center.

(11) "Transfer" means relocating and moving a person who is a resident of the southwest Idaho treatment center from that institution to a community facility or private residence or from one (1) community facility or private residence to another. Transfer does not include relocating or moving a resident of the southwest Idaho treatment center between rooms or beds within the southwest Idaho treatment center.

History.

I.C., § 56-234A, as added by 2011, ch. 101, § 2, p. 256; am. 2012, ch. 107, § 8, p. 284.

STATUTORY NOTES

Cross References.

Department of health and welfare, § 56-1001 et seq.

tuted "southwest Idaho treatment center" for "Idaho state school and hospital" in subsections (10) and (11).

Amendments.

The 2012 amendment, by ch. 107, substi-

56-235. Southwest Idaho treatment center. — The establishment by law of the southwest Idaho treatment center at Nampa, Idaho, is hereby ratified and affirmed, and its operation continued; provided, however, that on and after the effective date of this act, the treatment center shall be in the general supervision, control and government of the state department of health and welfare. All rights and title to property, real and personal, belonging to or vested in the state board of health [and welfare] are hereby transferred and vested in the state department of health and welfare. The state department is empowered to acquire, by purchase or exchange, any property which in the judgment of the department is needful for the operation of the treatment center, and to dispose of, by sale or exchange, any property which in the judgment of the department is not needful for the operation of the same. The department of health and welfare shall have authority to administer the treatment center, to employ and release such personnel as are required for the operation of the treatment center, fix salaries, and to perform any other necessary and proper functions in the efficient and beneficial operation of the treatment center.

History.

I.C., § 56-235, as added by 1972, ch. 44,

§ 7, p. 67; am. 1974, ch. 23, § 166, p. 633; am. 2011, ch. 102, § 3, p. 260.

STATUTORY NOTES

Amendments.

The 2011 amendment, by ch. 102, in the section heading and in text, substituted “southwest Idaho treatment center” for “Idaho state school and hospital”; and, throughout the section, substituted “treatment center” for “school and hospital.”

Compiler’s Notes.

The phrase “the effective date of this act” in the first sentence refers to the effective date of S.L. 1972, ch. 44, which was February 28, 1972.

The bracketed insertion in the second sen-

tence was added by the compiler to reflect the 1974 name change of the board of health to the board of health and welfare. See § 56-1005.

Section 12 of S.L. 1972, ch. 44 read: “The provisions of this act shall in no manner affect the rights or privileges of any employee transferred to the department of public assistance under the public employees retirement system (chapter 13, title 59, Idaho Code), group insurance plan (chapter 12, title 59, Idaho Code), or the personnel system (chapter 53, title 67, Idaho Code).”

56-235A. Prohibitions, restrictions and limitations on admission.

— (1) The southwest Idaho treatment center shall not admit, accept or receive any person unless an admission-discharge committee determines that:

- (a) The individual has a developmental disability;
- (b) The individual meets the level of care requirements and active treatment requirements for admission to an intermediate care facility for persons with intellectual disabilities;
- (c) All community facilities, options and supports have been exhausted, and there is no available community facility or private residence that is least restrictive, appropriate and consistent with the needs of the individual; and
- (d) The southwest Idaho treatment center is the least restrictive available residential placement consistent with the needs of the individual after considering all available and appropriate community facilities and private residences.

(2) The director may limit admissions and establish admission priorities to the southwest Idaho treatment center through rulemaking in order to ensure that expenditures for services do not exceed amounts appropriated by the legislature and allocated by the department to the facility. The southwest Idaho treatment center may refuse any applicant for voluntary admission.

- (3) Subsections (1) and (2) of this section do not apply to:
 - (a) Temporary emergency admissions or placements for crisis stabilization only, for up to ninety (90) days, that are preauthorized by the director; or
 - (b) Admissions or placements made by the director pursuant to section 66-406, Idaho Code.

History.

I.C., § 56-235A, as added by 2011, ch. 101, § 3, p. 256; am. 2012, ch. 107, § 9, p. 284.

STATUTORY NOTES

Amendments.

The 2012 amendment, by ch. 107, substituted "southwest Idaho treatment center" for

"Idaho state school and hospital" in subsections (1) and (2).

56-235B. Discharge planning — Authorization to discharge. —

The director may discharge a resident of the southwest Idaho treatment center on such terms and conditions as the director may determine whenever an admission-discharge committee determines there is an available community facility or private residence that is least restrictive, appropriate and consistent with the individual's needs. The director shall use reasonable efforts to discharge a resident to a community facility or private residence where the individual can be readily visited by those persons interested in his well-being.

History.

I.C., § 56-235B, as added by 2011, ch. 101, § 4, p. 256; am. 2012, ch. 107, § 10, p. 284.

STATUTORY NOTES

Amendments.

The 2012 amendment, by ch. 107, substi-

tuted "southwest Idaho treatment center" for "Idaho state school and hospital".

56-235C. Notice of discharge — Request for hearing. — (1) Before a discharge plan is implemented, the resident and the resident's spouse, guardian, adult next of kin or friend, if any, shall be given an opportunity to participate in the development and review of the admission-discharge committee's discharge plan.

(2) If, after reasonable efforts have been exhausted, the resident or the resident's spouse, guardian, adult next of kin or friend, if any, does not agree with the admission-discharge committee's discharge plan, ninety (90) days prior to discharge, written notice shall be filed with the committing court, if any, and served by registered or certified mail upon the resident, resident's attorney, and either the resident's spouse, guardian, adult next of kin or friend, if any. The written notice must include a statement advising the resident of the right to request a hearing by the director and must also include a statement advising the resident of the right to judicial review.

(3) Within fifteen (15) days from receipt of the notice of discharge, the resident may serve a written request for hearing upon the director. Upon receipt of such request, the director shall fix a date for hearing, which date shall not be more than thirty (30) days from receipt of the request, and shall give the resident at least fifteen (15) days' written notice of said hearing date. Within thirty (30) days after the conclusion of the hearing, the director shall notify the resident in writing by registered or certified mail of his decision. A transfer shall not be implemented during any period in which a request for hearing is pending and undecided by the director. If no request for hearing is made within fifteen (15) days from receipt of the notice of discharge, the director may discharge the resident.

(4) The director shall periodically monitor the adjustment of the former

resident to his transfer to a community facility or private residence. If within ninety (90) days following a transfer to a community facility or private residence, an admission-discharge committee determines that the former resident is not adjusting to the transfer and there is no other available community facility or private residence least restrictive, appropriate and consistent with the needs of the former resident, the director may make the determination that the former resident be readmitted to the southwest Idaho treatment center in accordance with section 56-235A, Idaho Code.

History.

I.C., § 56-235C, as added by 2011, ch. 101,
§ 5, p. 256; am. 2012, ch. 107, § 11, p. 284.

STATUTORY NOTES**Amendments.**

The 2012 amendment, by ch. 107, substituted "southwest Idaho treatment center" for

"Idaho state school and hospital" in subsection (4).

56-235D. Appeals. — If a former resident feels aggrieved by a decision of the director rendered pursuant to a hearing as provided in section 56-235C, Idaho Code, appeal may be taken to the committing court or the court of the county in which such former resident is present. Appeal must be taken in the manner and form set forth in chapter 52, title 67, Idaho Code, provided however, the filing of a notice of appeal with the court shall not, unless otherwise ordered, stay the resident's discharge or the decision of the director.

History.

I.C., § 56-235D, as added by 2011, ch. 101,
§ 6, p. 256.

56-235E. Rulemaking authority. — The director, in addition to other duties imposed by law, is hereby authorized and directed through rulemaking to establish procedures necessary to implement these provisions. The rulemaking authority granted in this section shall be limited to the specific standards and procedures required by sections 56-234 through 56-235D, Idaho Code.

History.

I.C., § 56-235E, as added by 2011, ch. 101,
§ 7, p. 256.

56-236. Short title. — This act shall be known and may be cited as the "Idaho Health Insurance Access Card Act."

History.

I.C., § 56-236, as added by 2003, ch. 308,
§ 1, p. 844.

. STATUTORY NOTES

Prior Laws.

Former § 56-236, which comprised I.C., § 56-236, as added by 1972, ch. 44, § 8, p. 67; am. 1974, ch. 23, §§ 167, 168, p. 633, was repealed by S.L. 1982, ch. 59, § 1.

Compiler's Notes.

The term "this act" refers to S.L. 2003, ch. 308, which is codified as §§ 41-406 and 56-236 to 56-242.

56-237. Purpose. — The purpose and intent of this act is to promote the availability of health insurance to children and families and to adults who are employed by small businesses in Idaho and their dependent spouses whose families' gross incomes fall within one hundred eighty-five percent (185%) of the federal poverty guidelines.

History.

I.C., § 56-237, as added by 2003, ch. 308, § 2, p. 844.

STATUTORY NOTES

Prior Laws.

Former § 56-237, which comprised I.C., § 56-237, as added by 1972, ch. 44, § 9, p. 67; am. 1974, ch. 23, §§ 167, 168, p. 633, was repealed by S.L. 1982, ch. 59, § 1.

Compiler's Notes.

The term "this act" refers to S.L. 2003, ch. 308, which is codified as §§ 41-406 and 56-236 to 56-242.

56-238. Definitions. — As used in sections 56-236 through 56-242, Idaho Code:

(1) "Children's access card program" means the program created in section 56-240, Idaho Code.

(2) "CHIP Plan A" means the existing Idaho children's health insurance program for children eligible under federal title XXI whose families' gross incomes do not exceed one hundred fifty percent (150%) of the federal poverty guidelines.

(3) "CHIP Plan B" means the program created in section 56-239, Idaho Code.

(4) "Department" means the department of health and welfare.

(5) "Director" means the director of the department of health and welfare.

(6) "Eligible adult" means a person:

(a) Over eighteen (18) years of age living in Idaho;

(b) Whose family's gross income is equal to or less than one hundred eighty-five percent (185%) of the federal poverty guidelines; and

(c) Who is employed full time by a small employer, meaning an employer with two (2) to fifty (50) employees and as such term is defined in section 41-4703, Idaho Code, and who is eligible for health insurance coverage under a small employer health benefit plan regulated under chapter 47, title 41, Idaho Code, or the dependent spouse of such employee.

(7) "Eligible child" means a child under nineteen (19) years of age living in Idaho whose family's gross income falls within federal poverty guidelines for Medicaid, CHIP Plan A or CHIP Plan B.

(8) "Health benefit plan" means any hospital or medical policy or certificate, any subscriber contract provided by a hospital or professional service

corporation, or managed care organization subscriber contract. Health benefit plan does not include policies or certificates of insurance for specific disease, hospital confinement indemnity, accident-only, credit, dental, vision, medicare supplement, long-term care, or disability income insurance, student health benefits only coverage issued as a supplement to liability insurance, worker's compensation or similar insurance, automobile medical payment insurance or nonrenewable short-term coverage issued for a period of twelve (12) months or less.

(9) "Small business health insurance pilot program" means the program created in section 56-241, Idaho Code.

History.

I.C., § 56-238, as added by 2003, ch. 308, § 3, p. 844; am. 2006, ch. 270, § 1, p. 839.

STATUTORY NOTES

Cross References.

Department of health and welfare, § 56-1001 et seq.

Prior Laws.

Former § 56-238, which comprised I.C., § 56-238, as added by 1972, ch. 44, § 10, p. 67; am. 1974, ch. 23, §§ 167, 168, p. 633, was repealed by S.L. 1982, ch. 59, § 1.

Amendments.

The 2006 amendment, by ch. 270, in the introductory paragraph, substituted "sections 56-236 through 56-242, Idaho Code" for "this act"; and in subsection (7), inserted "Medicaid" preceding "CHIP Plan A," and deleted the

last two sentences, which read: "Children currently eligible for CHIP under federal title XXI may elect to participate in either the Idaho children's health insurance program (CHIP Plan A) or the children's access card program. Children whose family's gross income is between one hundred fifty percent (150%) and one hundred eighty-five percent (185%) of the federal poverty guidelines may elect to participate in either the CHIP Plan B or the children's access card program."

Federal References.

Federal title XXI, referred to in subsection (2), is codified as 42 U.S.C.S. § 1397aa et seq.

56-239. CHIP Plan B. — (1) There is hereby created in the department a CHIP Plan B that shall be made available by the department to eligible children, as defined in section 56-238, Idaho Code, whose family's gross income is between one hundred fifty percent (150%) and one hundred eighty-five percent (185%) of the federal poverty guidelines. The director shall implement the program by adopting rules recommended by the board of the Idaho [individual] high risk reinsurance pool created in section 41-5502, Idaho Code, that authorize policies of health insurance for children enrolled in the CHIP Plan B.

(2) There is hereby created a CHIP Plan B advisory board which shall advise the Idaho [individual] high risk reinsurance pool board concerning issues related to the CHIP Plan B. The board shall consist of eight (8) members, four (4) members to be appointed by the director and four (4) members to be appointed by the governor. At least two (2) members of the board shall be parents of children who are eligible to participate in the CHIP Plan B.

History.

I.C., § 56-239, as added by 2003, ch. 308, § 4, p. 844.

STATUTORY NOTES

Prior Laws.

Former § 56-239, which comprised, I.C., § 56-239, as added by 1976, ch. 134, § 2, p. 502, was repealed by S.L. 1982, ch. 59, § 1.

Compiler's Notes.

The bracketed insertions in subsections (1) and (2) were added by the compiler to correct the name of the referenced agency.

56-240. Children's access card program. — (1) There is hereby created in the department a children's access card program that shall, through the Idaho health insurance access card program, make payments to the insurance company providing coverage under a health benefit plan, as defined in section 56-238, Idaho Code, for an eligible child. In each month the insurance coverage is in effect, a one hundred dollar (\$100) payment shall be applied to the monthly insurance premium billed each month by the insurance company with a maximum payment of three hundred dollars (\$300) for all eligible children in the family. The director shall implement the program by adopting rules recommended by the board of the Idaho [individual] high risk reinsurance pool created in section 41-5502, Idaho Code.

(2) Participation in the children's access card program by any employer shall be optional. Nothing in sections 56-236 through 56-242, Idaho Code, shall be construed to mandate or require that an employer participate in the children's access card program.

(3) There is hereby created a children's access card program advisory board which shall advise the Idaho [individual] high risk reinsurance pool board concerning issues related to the children's access card program. The board shall consist of eight (8) members, four (4) members to be appointed by the director and four (4) members to be appointed by the governor. At least two (2) members of the board shall be parents of children who are eligible to participate in the children's access card program.

History.

I.C., § 56-240, as added by 2003, ch. 308, § 5, p. 844; am. 2006, ch. 270, § 2, p. 839.

STATUTORY NOTES

Cross References.

Health insurance access card program, § 56-242.

Prior Laws.

Former § 56-240, which comprised I.C., § 56-240, as added by 1976, ch. 134, § 3, p. 502, was repealed by S.L. 1982, ch. 59, § 1.

Amendments.

The 2006 amendment, by ch. 270, in subsection (1), substituted "an eligible child" for

"a child who is eligible for federal title XXI benefits under CHIP Plan A or CHIP Plan B" and "eligible children" for "dependent children"; and in subsection (2), substituted "sections 56-236 through 56-242, Idaho Code" for "this act."

Compiler's Notes.

The bracketed insertions in subsections (1) and (3) were added by the compiler to correct the name of the referenced agency.

56-241. Small business health insurance pilot program. — (1) There is hereby created in the department a small business health insurance pilot program that shall be made available to up to one thousand (1,000) eligible adults, as defined in section 56-238, Idaho Code, based on

available funding. The director shall implement the program by adopting rules recommended by the board of the Idaho [individual] high risk reinsurance pool created in section 41-5502, Idaho Code, providing for the payment of the benefit authorized in subsection (2) of this section through the use of the Idaho health insurance access card.

(2) The small business health insurance pilot program shall, through the Idaho health insurance access card program, pay to the insurance company providing insurance coverage through policies regulated under chapter 47, title 41, Idaho Code, for an adult enrolled in the small employer health insurance pilot program, for each month the insurance coverage is in effect, a one hundred dollar (\$100) payment to be applied to the monthly insurance premium billed each month by the insurance company.

(3) Participation in the small business health insurance pilot program by any employer shall be optional. Nothing in sections 56-236 through 56-242, Idaho Code, shall be construed to mandate or require that an employer participate in the pilot program. Small employers who choose to participate in the small business health insurance pilot program shall meet insurance carriers' contribution and participation guidelines.

(4) There is hereby created a small business health insurance advisory board which shall advise the Idaho [individual] high risk reinsurance pool board concerning issues related to the small business health insurance pilot program. The board shall consist of eight (8) members, four (4) members to be appointed by the director and four (4) members to be appointed by the governor. At least four (4) members of the board shall be representatives of small businesses, meaning those with two (2) to fifty (50) employees, that offer employee health benefit plans regulated under chapter 47, title 41, Idaho Code.

History.

I.C., § 56-241, as added by 2003, ch. 308, § 6, p. 844; am. 2006, ch. 270, § 3, p. 839.

STATUTORY NOTES

Cross References.

Health insurance access card program, § 56-242.

Prior Laws.

Former § 56-241, which comprised I.C., § 56-241, as added by 1976, ch. 134, § 4, p. 502, was repealed by S.L. 1982, ch. 59, § 1.

Amendments.

The 2006 amendment, by ch. 270, in subsection (3), substituted "sections 56-236 through 56-242, Idaho Code" for "this act" and "meet insurance carriers' contribution and

participation guidelines" for "contribute at least fifty percent (50%) of the employee premium and at least fifty percent (50%) of the combination of employee and dependent spouse contribution percentage for those employees and their dependent spouses who are enrolled in the small business health insurance pilot program."

Compiler's Notes.

The bracketed insertions in subsections (1) and (4) were added by the compiler to correct the name of the referenced agency.

56-242. Idaho health insurance access card. — (1) The director shall develop an Idaho health insurance access card program in the department to implement the children's access card program and the small business health insurance pilot program.

(2)(a) There is hereby created and established in the state treasury a fund to be known as the "Idaho health insurance access card fund." Moneys in the fund shall be maintained in three (3) subaccounts, identified respectively as the "CHIP Plan B subaccount," the "children's access card program subaccount" and the "small business health insurance pilot program subaccount." Appropriations, matching federal funds, grants, donations and moneys from other sources shall be paid into the fund. The department shall administer the fund. Any interest earned on the investment of idle moneys in the fund shall be returned to and deposited in the fund.

(b) Moneys in the CHIP Plan B subaccount, the children's access card program subaccount and the small business health insurance pilot program subaccount shall be expended pursuant to appropriation for the payment of benefits and capped administrative costs of the department.

(3) The director shall apply for waivers of federal title XXI and title XIX to subsidize health care coverage under the CHIP Plan B, the children's access card program and the small business health insurance pilot program. Federal matching funds received by the department to provide coverage under CHIP Plan B, the children's access card program and the small business health insurance pilot program shall be deposited in the appropriate subaccount.

(4) The director is authorized to promulgate rules recommended by the board of the Idaho [individual] high risk reinsurance pool to implement the CHIP Plan B, the children's access card program and the small business health insurance pilot program.

(5) Insurers offering health benefit plans regulated under chapter 47, title 41, Idaho Code, shall accept payment for such plans under the small business health insurance pilot program pursuant to rules promulgated by the department. Insurers offering health benefit plans, as defined in section 56-238, Idaho Code, shall accept payment for such plans under the children's access card program.

(6) The CHIP Plan B and the children's access card program shall be implemented by July 1, 2004. Implementation of the small business health insurance pilot program shall begin on July 1, 2005.

History.

I.C., § 56-242, as added by 2003, ch. 308,
§ 7, p. 844.

STATUTORY NOTES**Cross References.**

Children's access card program, § 56-240.

Federal title XIX, referred to in subsection (3), is codified as 42 U.S.C.S. § 1396 et seq.

Prior Laws.

Former § 56-242, which comprised I.C., § 56-242, as added by 1976, ch. 134, §§ 4, p. 502, was repealed by S.L. 1982, ch. 59, § 1.

Compiler's Notes.

The bracketed insertion in subsection (4) was added by the compiler to correct the name of the referenced agency.

Federal References.

Federal title XXI, referred to in subsection (3), is codified as 42 U.S.C.S. § 1397aa et seq.

56-243, 56-244. Civil rights of residents — Individual treatment plan. [Repealed.]

STATUTORY NOTES

Compiler's Notes.

These sections, which comprised I.C., §§ 56-243, 56-244, as added by 1976, ch. 134,

§§ 6, 7, p. 502, were repealed by S.L. 1982, ch. 59, § 1. For present law, see §§ 66-401 to 66-414.

56-245 — 56-249. [Reserved.]

56-250. Short title. — This act shall be known and may be cited as the “Idaho Medicaid Simplification Act.”

History.

I.C., § 56-250, as added by 2006, ch. 278, § 1, p. 853.

STATUTORY NOTES

Compiler's Notes.

The term “this act” refers to S.L. 2006, ch. 278, which is codified as §§ 56-250 to 56-255.

56-251. Legislative intent. — (1) The legislature finds that the current federal medicaid law and regulations have not kept pace with modern health care management practices, create obstacles to quality care and impose unnecessary costs on the delivery of effective and efficient health care. The legislature believes that the state of Idaho must strive to balance efforts to contain medicaid costs, improve program quality and improve access to services. The legislature further believes that the state of Idaho could achieve improved health outcomes for medicaid participants by simplifying eligibility and developing health benefits for medicaid participants according to their health needs, including appropriate preventive and wellness services.

(2) The legislature supports development, at a minimum, of the following health-need categories:

(a) Low-Income Children and Working-Age Adults with No Special Health Needs. The broad policy goal for the medicaid program for low-income children and working-age adults with no special health needs is to achieve and maintain wellness by emphasizing prevention and by proactively managing health. Additional specific goals are:

- (i) To emphasize preventive care and wellness;
- (ii) To increase participant ability to make good health choices; and
- (iii) To strengthen the employer-based health insurance system.

(b) Persons with Disabilities or Special Health Needs. The broad policy goal for the medicaid program for persons with disabilities or special health needs is to finance and deliver cost-effective individualized care. Additional specific goals are:

- (i) To emphasize preventive care and wellness;
- (ii) To empower individuals with disabilities to manage their own lives;

- (iii) To provide opportunities for employment for persons with disabilities; and
 - (iv) To provide and to promote family-centered, community-based, coordinated care for children with special health care needs.
- (c) Persons with Medicare and Medicaid Coverage. The broad policy goal for the medicaid program for persons with medicare and medicaid coverage is to finance and deliver cost-effective individualized care which is integrated, to the greatest extent possible, with medicare coverage. Additional specific goals are:
- (i) To emphasize preventive care and wellness;
 - (ii) To improve coordination between medicaid and medicare coverage;
 - (iii) To increase nonpublic financing options for long-term care; and
 - (iv) To ensure participants' dignity and quality of life.

(3) To the extent practicable, the department shall achieve savings and efficiencies through use of modern care management practices, in areas such as network management, cost-sharing, benefit design and premium assistance.

(4) The department's duty to implement these changes in accordance with the intent of the legislature is contingent upon federal approval.

History.

I.C., § 56-251, as added by 2006, ch. 278,
§ 1, p. 853; am. 2007, ch. 200, § 1, p. 610.

STATUTORY NOTES

Amendments.

The 2007 amendment, by ch. 200, in the introductory paragraph in subsection (2)(a), twice inserted "with no special health needs"; and in the introductory paragraph in subsection (2)(c), twice substituted "persons with medicare and medicaid coverage" for "elders."

Compiler's Notes.

The abbreviation enclosed in parentheses so appeared in the law as enacted.

56-252. Definitions. — As used in sections 56-250 through 56-255, Idaho Code:

(1) "Benchmark plan" means a package of health benefits coverage that provides coverage for a specified population in accordance with section 6044 of the deficit reduction act of 2005.

(2) "Benefit design" means selection of services, providers and beneficiary cost-sharing to create the scope of coverage for participants.

(3) "Community supports" means services that promote the ability of persons with disabilities to be self-sufficient and live independently in their own communities.

(4) "Cost-sharing" means participant payment for a portion of medicaid service costs such as deductibles, coinsurance or copayment amounts.

(5) "Department" means the department of health and welfare.

(6) "Director" means the director of the department of health and welfare.

(7) "Health risk assessment" means a process of assessing the health status and health needs of participants.

(8) "Medicaid" means Idaho's medical assistance program.

(9) “Medical assistance” means payments for part or all of the cost of services funded by titles XIX or XXI of the federal social security act as amended, as may be designated by department rule.

(10) “Medical home” means a primary care case manager designated by the participant or the department to coordinate the participant’s care.

(11) “Network management” means establishment and management of contracts between the department and limited groups of providers or suppliers of medical and other services to participants.

(12) “Participant” means a person eligible for and enrolled in the Idaho medical assistance program.

(13) “Premium assistance” means use of medicaid funds to pay part or all of the costs of enrolling eligible individuals into private insurance coverage.

(14) “Primary care case manager” means a primary care physician who contracts with medicaid to coordinate the care of certain participants.

(15) “Provider” means any individual, partnership, association, corporation or organization, public or private, which provides residential or assisted living services, certified family home services, nursing facility services or services offered pursuant to medical assistance.

(16) “Self-determination” means medicaid services that allow persons with disabilities to exercise choice and control over the services and supports they receive.

(17) “State plan” means the contract between the state and federal government under 42 U.S.C. section 1396a(a).

History.

I.C., § 56-252, as added by 2006, ch. 278,
§ 1, p. 853; am. 2007, ch. 200, § 2, p. 610.

STATUTORY NOTES

Cross References.

Department of health and welfare, § 56-1001 et seq.

Amendments.

The 2007 amendment, by ch. 200, added subsection (1) and redesignated the subsequent subsections accordingly.

Federal References.

Section 6044 of the deficit reduction act of 2005, referred to in subsection (1), is codified as 42 USCS § 1396u-7.

Federal title XIX, referred to in subsection (9), is codified as 42 U.S.C.S. § 1396 et seq.

Federal title XXI, referred to in subsection (9), is codified as 42 U.S.C.S. § 1397aa et seq.

56-253. Powers and duties of the director. — (1) The director is hereby encouraged and empowered to obtain federal approval in order that Idaho design and implement changes to its medicaid program that advance the quality of services to participants while allowing access to needed services and containing excessive costs. The design of Idaho’s medicaid program shall incorporate the concepts expressed in section 56-251, Idaho Code.

(2) The director may create health-need categories other than those stated in section 56-251(2)(a), Idaho Code, subject to legislative approval, and may develop a medicaid benchmark plan for each category.

(3) Each benchmark plan shall include explicit policy goals for the covered population identified in the plan, as well as specific benefit pack-

ages, delivery system components and performance measures in accordance with section 67-1904, Idaho Code.

(4) The director shall establish a mechanism to ensure placement of participants into the appropriate benchmark plan as allowed under section 6044 of the deficit reduction act of 2005. This mechanism shall include, but not be limited to, a health risk assessment. This assessment shall comply with federal requirements for early and periodic screening, diagnosis and treatment (EPSDT) services for children, in accordance with section 1905(a)(4)(B) of the social security act.

(5) The director may require, subject to federal approval, participants to designate a medical home. Applicants for medical assistance shall receive information about primary care case management, and, if required to so designate, shall select a primary care provider as part of the eligibility determination process.

(6) The director may, subject to federal approval, enter into contracts for medical and other services when such contracts are beneficial to participant health outcomes as well as economically prudent for the medicaid program.

(7) The director may obtain agreements from medicare, school districts and other entities to provide medical care if it is practical and cost-effective.

(8) The director is given authority to promulgate rules consistent with this act.

History.

I.C., § 56-253, as added by 2006, ch. 278,
§ 1, p. 853; am. 2007, ch. 200, § 3, p. 610.

STATUTORY NOTES

Amendments.

The 2007 amendment, by ch. 200, in subsections (2) through (4), substituted "benchmark plan" for "state plan"; and in subsection (4), inserted "as allowed under section 6044 of the deficit reduction act of 2005."

Federal References.

Section 6044 of the deficit reduction act of 2005, referred to in subsection (4), is codified as 42 U.S.C.S. § 1396u-7.

Section 1905 of the social security act, referred to in subsection (4), is codified as 42 U.S.C.S. § 1396d.

Compiler's Notes.

The term "this act" in subsection (8) refers to S.L. 2006, ch. 278, which is codified as §§ 56-250 to 56-255.

The abbreviation enclosed in parentheses so appeared in the law as enacted.

56-254. Eligibility for medical assistance. — The department shall make payments for medical assistance to, or on behalf of, the following persons eligible for medical assistance.

(1) The benchmark plan for low-income children and working-age adults with no special health needs includes the following persons:

(a) Children in families whose family income does not exceed one hundred eighty-five percent (185%) of the federal poverty guideline and who meet age-related and other eligibility standards in accordance with department rule;

(b) Pregnant women of any age whose family income does not exceed one hundred thirty-three percent (133%) of the federal poverty guideline and who meet other eligibility standards in accordance with department rule,

- or who meet the presumptive eligibility guidelines in accordance with section 1920 of the social security act;
- (c) Infants born to medicaid-eligible pregnant women. Medicaid eligibility must be offered throughout the first year of life so long as the infant remains in the mother's household and she remains eligible, or would be eligible if she were still pregnant;
- (d) Adults in families with dependent children as described in section 1931 of the social security act, who meet the requirements in the state's assistance to families with dependent children (AFDC) plan in effect on July 16, 1996;
- (e) Families who are provided six (6) to twelve (12) months of medicaid coverage following loss of eligibility under section 1931 of the social security act due to earnings, or four (4) months of medicaid coverage following loss of eligibility under section 1931 of the social security act due to an increase in child or spousal support;
- (f) Employees of small businesses who meet the definition of "eligible adult" as described in section 56-238, Idaho Code, whose eligibility is limited to the medical assistance program described in section 56-241, Idaho Code; and
- (g) All other mandatory groups as defined in title XIX of the social security act, if not listed separately in subsection (2) or (3) of this section.
- (2) The benchmark plan for persons with disabilities or special health needs includes the following persons:
- (a) Persons under age sixty-five (65) years eligible in accordance with title XVI of the social security act, as well as persons eligible for aid to the aged, blind and disabled (AABD) under titles I, X and XIV of the social security act;
- (b) Persons under age sixty-five (65) years who are in need of the services of a licensed nursing facility, a licensed intermediate care facility for the developmentally disabled, a state mental hospital, or home-based and community-based care, whose income does not exceed three hundred percent (300%) of the social security income (SSI) standard and who meet the asset standards and other eligibility standards in accordance with federal law and regulation, Idaho law and department rule;
- (c) Certain disabled children described in 42 CFR 435.225 who meet resource limits for aid to the aged, blind and disabled (AABD) and income limits for social security income (SSI) and other eligibility standards in accordance with department rules;
- (d) Persons under age sixty-five (65) years who are eligible for services under both titles XVIII and XIX of the social security act;
- (e) Children who are eligible under title IV-E of the social security act for subsidized board payments, foster care or adoption subsidies, and children for whom the state has assumed temporary or permanent responsibility and who do not qualify for title IV-E assistance but are in foster care, shelter or emergency shelter care, or subsidized adoption, and who meet eligibility standards in accordance with department rule;
- (f) Eligible women under age sixty-five (65) years with incomes at or below two hundred percent (200%) of the federal poverty level, for cancer

treatment pursuant to the federal breast and cervical cancer prevention and treatment act of 2000;

(g) Low-income children and working-age adults under age sixty-five (65) years who qualify under subsection (1) of this section and who require the services for persons with disabilities or special health needs listed in section 56-255(3), Idaho Code; and

(h) Persons over age sixty-five (65) years who choose to enroll in this state plan.

(3) The benchmark plan for persons over twenty-one (21) years of age who have medicare and medicaid coverage includes the following persons:

(a) Persons eligible in accordance with title XVI of the social security act, as well as persons eligible for aid to the aged, blind and disabled (AABD) under titles I, X and XIV of the social security act;

(b) Persons who are in need of the services of a licensed nursing facility, a licensed intermediate care facility for the developmentally disabled, a state mental hospital, or home-based and community-based care, whose income does not exceed three hundred percent (300%) of the social security income (SSI) standard and who meet the assets standards and other eligibility standards in accordance with federal and state law and department rule;

(c) Persons who are eligible for services under both titles XVIII and XIX of the social security act who have enrolled in the medicare program; and

(d) Persons who are eligible for services under both titles XVIII and XIX of the social security act and who elect to enroll in this state plan.

History.

I.C., § 56-254, as added by 2006, ch. 278,
§ 1, p. 853; am. 2007, ch. 200, § 4, p. 610.

STATUTORY NOTES

Amendments.

The 2007 amendment, by ch. 200, in the introductory paragraph in subsections (1) through (3), substituted "benchmark plan" for "state plan"; in the introductory paragraph in subsection (1), inserted "with no special health needs"; in the introductory paragraph in subsection (3), substituted "persons over twenty-one (21) years of age who have medicare and medicaid coverage" for "elders"; in subsections (3)(a) through (3)(c), deleted "aged sixty five (65) years or older" following "Persons"; and in subsection (3)(d), deleted "under age sixty five (65) years" following "Persons."

Federal References.

Section 1920 of the social security act, referred to in paragraph (1)(b), is codified as 42 U.S.C.S. § 1396r-1.

Section 1931 of the social security act, referred to in paragraphs (1)(d) and (2)(e), is codified as 42 U.S.C.S. § 1396u-1.

Title XIX of the social security act, referred

to in paragraphs (1)(g), (2)(d), (3)(c), and (3)(d), is codified as 42 U.S.C.S. § 1396 et seq.

Title XVI of the social security act, referred to in paragraphs (2)(a) and (3)(a), is codified as 42 U.S.C.S. § 1381 et seq.

Titles I, X and XIV, referred to in paragraphs (2)(a) and (3)(a), are codified, respectively, as 42 U.S.C.S. § 301 et seq., 42 U.S.C.S. § 1201 et seq., and 42 U.S.C.S. § 1351 et seq.

Title XVIII of the social security act, referred to in paragraphs (2)(d), (3)(c), and (3)(d), is codified as 42 U.S.C.S. § 1395 et seq.

Title IV-E of the social security act, referred to in paragraph (2)(e), is codified as 42 U.S.C.S. § 670 et seq.

The federal breast and cervical cancer prevention and treatment act of 2000, referred to in paragraph (2)(f), is P.L. 106-354, which is codified as 42 U.S.C.S. §§ 1305, 1396a, 1396b, 1396d, and 1396r-1b.

Compiler's Notes.

The abbreviations enclosed in parentheses so appeared in the law as enacted.

56-255. Medical assistance program — Services to be provided. —

(1) The department may make payments for the following services furnished by providers to participants who are determined to be eligible on the dates on which the services were provided. Any service under this section shall be reimbursed only when medically necessary within the appropriations provided by law and in accordance with federal law and regulation, Idaho law and department rule. Notwithstanding any other provision of this chapter, medical assistance includes the following benefits specific to the eligibility categories established in section 56-254(1), (2) and (3), Idaho Code, as well as a list of benefits to which all Idaho medicaid participants are entitled, defined in subsection (5) of this section.

(2) Specific health benefits and limitations for low-income children and working-age adults with no special health needs include:

- (a) All services described in subsection (5) of this section;
- (b) Early and periodic screening, diagnosis and treatment services for individuals under age twenty-one (21) years, and treatment of conditions found; and
- (c) Cost-sharing required of participants. Participants in the low-income children and working-age adult group are subject to the following premium payments, as stated in department rules:

- (i) Participants with family incomes equal to or less than one hundred thirty-three percent (133%) of the federal poverty guideline are not required to pay premiums; and
- (ii) Participants with family incomes above one hundred thirty-three percent (133%) of the federal poverty guideline will be required to pay premiums in accordance with department rule.

(3) Specific health benefits for persons with disabilities or special health needs include:

- (a) All services described in subsection (5) of this section;
- (b) Early and periodic screening, diagnosis and treatment services for individuals under age twenty-one (21) years, and treatment of conditions found;
- (c) Case management services as defined in accordance with section 1905(a)(19) or section 1915(g) of the social security act; and
- (d) Mental health services delivered by providers that meet national accreditation standards, including:

- (i) Inpatient psychiatric facility services whether in a hospital, or for persons under age twenty-two (22) years in a freestanding psychiatric facility, as permitted by federal law, in excess of those limits in department rules on inpatient psychiatric facility services provided under subsection (5) of this section;
- (ii) Outpatient mental health services in excess of those limits in department rules on outpatient mental health services provided under subsection (5) of this section; and
- (iii) Psychosocial rehabilitation for reduction of mental disability for children under the age of eighteen (18) years with a serious emotional disturbance (SED). Individuals age eighteen (18) years to age twenty-one (21) years with severe and persistent mental illness shall have

- access to benefits up to a weekly cap of five (5) hours while adults over the age of twenty-one (21) years with severe and persistent mental illness shall have access to benefits up to a weekly cap of four (4) hours;
- (e) Long-term care services, including:
- (i) Nursing facility services, other than services in an institution for mental diseases, subject to participant cost-sharing;
 - (ii) Home-based and community-based services, subject to federal approval, provided to individuals who require nursing facility level of care who, without home-based and community-based services, would require institutionalization. These services will include community supports, including options for self-determination or family-directed, which will enable individuals to have greater freedom to manage their own care within the determined budget as defined by department rule; and
 - (iii) Personal care services in a participant's home, prescribed in accordance with a plan of treatment and provided by a qualified person under supervision of a registered nurse;
- (f) Services for persons with developmental disabilities, including:
- (i) Intermediate care facility services, other than such services in an institution for mental diseases, for persons determined in accordance with section 1902(a)(31) of the social security act to be in need of such care, including such services in a public institution, or distinct part thereof, for persons with intellectual disabilities or persons with related conditions;
 - (ii) Home-based and community-based services, subject to federal approval, provided to individuals who require an intermediate care facility for people with intellectual disabilities (ICF/ID) level of care who, without home-based and community-based services, would require institutionalization. These services will include community supports, including options for self-determination or family-directed, which will enable individuals to have greater freedom to manage their own care within the determined budget as defined by department rule. The department shall respond to requests for budget modifications only when health and safety issues are identified and meet the criteria as defined in department rule; and
 - (iii) Developmental disability services for children and adults shall be available based on need through state plan services or waiver services as described in department rule. The department shall develop a blended rate covering both individual and group developmental therapy services;
- (g) Home health services, including:
- (i) Intermittent or part-time nursing services provided by a home health agency or by a registered nurse when no home health agency exists in the area;
 - (ii) Home health aide services provided by a home health agency; and
 - (iii) Physical therapy, occupational therapy or speech pathology and audiology services provided by a home health agency or medical rehabilitation facility;
- (h) Hospice care in accordance with section 1905(o) of the social security act;

- (i) Specialized medical equipment and supplies;
 - (j) Medicare cost-sharing, including:
 - (i) Medicare cost-sharing for qualified medicare beneficiaries described in section 1905(p) of the social security act;
 - (ii) Medicare part A premiums for qualified disabled and working individuals described in section 1902(a)(10)(E)(ii) of the social security act;
 - (iii) Medicare part B premiums for specified low-income medicare beneficiaries described in section 1902(a)(10)(E)(iii) of the social security act; and
 - (iv) Medicare part B premiums for qualifying individuals described in section 1902(a)(10)(E)(iv) and subject to section 1933 of the social security act; and
 - (k) Nonemergency medical transportation.
- (4) Specific health benefits for persons over twenty-one (21) years of age who have medicare and medicaid coverage include:
- (a) All services described in subsection (5) of this section, other than if provided under the federal medicare program;
 - (b) All services described in subsection (3) of this section, other than if provided under the federal medicare program;
 - (c) Other services that supplement medicare coverage; and
 - (d) Nonemergency medical transportation.
- (5) Benefits for all medicaid participants, unless specifically limited in subsection (2), (3) or (4) of this section, include the following:
- (a) Health care coverage including, but not limited to, basic inpatient and outpatient medical services, and including:
 - (i) Physicians' services, whether furnished in the office, the patient's home, a hospital, a nursing facility or elsewhere;
 - (ii) Services provided by a physician or other licensed practitioner to prevent disease, disability and other health conditions or their progressions, to prolong life, or to promote physical or mental health; and
 - (iii) Hospital care, including:
 - 1. Inpatient hospital services other than those services provided in an institution for mental diseases;
 - 2. Outpatient hospital services; and
 - 3. Emergency hospital services;
 - (iv) Laboratory and x-ray services;
 - (v) Prescribed drugs;
 - (vi) Family planning services and supplies for individuals of child-bearing age;
 - (vii) Certified pediatric or family nurse practitioners' services;
 - (viii) Emergency medical transportation;
 - (ix) Mental health services, including:
 - 1. Outpatient mental health services that are appropriate, within limits stated in department rules; and
 - 2. Inpatient psychiatric facility services within limits stated in department rules;
 - (x) Medical supplies, equipment, and appliances suitable for use in the home;

- (xi) Physical therapy and speech therapies combined to align with the annual medicare caps; and
- (xii) Occupational therapy to align with the annual medicare cap;
- (b) Primary care medical homes;
- (c) Dental services. Children shall have access to prevention, diagnosis and treatment services as defined in federal law. Adult coverage shall be limited to medically necessary oral surgery and palliative services and associated diagnostic services. Select covered benefits include: exams, radiographs, periodontal, oral and maxillofacial surgery and adjunctive general services as defined in department rule. Pregnant women, participants on the aged and disabled waiver and the developmental disability waiver shall have access to dental services that reflect evidence-based practice;
- (d) Medical care and any other type of remedial care recognized under Idaho law, furnished by licensed practitioners within the scope of their practice as defined by Idaho law, including:
 - (i) Podiatrists' services based on chronic care criteria as defined in department rule;
 - (ii) Optometrists' services based on chronic care criteria as defined in department rule;
 - (iii) Chiropractors' services shall be limited to six (6) visits per year; and
 - (iv) Other practitioners' services, in accordance with department rules;
- (e) Services for individuals with speech, hearing and language disorders as defined in department rule;
- (f) Eyeglasses prescribed by a physician skilled in diseases of the eye or by an optometrist;
- (g) Services provided by essential providers, including:
 - (i) Rural health clinic services and other ambulatory services furnished by a rural health clinic in accordance with section 1905(l)(1) of the social security act;
 - (ii) Federally qualified health center (FQHC) services and other ambulatory services that are covered under the plan and furnished by an FQHC in accordance with section 1905(l)(2) of the social security act;
 - (iii) Indian health services;
 - (iv) District health departments; and
 - (v) The family medicine residency of Idaho and the Idaho state university family medicine residency; and
- (h) Physician, hospital or other services deemed experimental are excluded from coverage. The director may allow coverage of procedures or services deemed investigational if the procedures or services are as cost-effective as traditional, standard treatments.

History.

I.C., § 56-255, as added by 2006, ch. 278, § 1, p. 853; am. 2007, ch. 200, § 5, p. 610; am. 2009, ch. 34, § 4, p. 95; am. 2010, ch. 235, § 46, p. 542; am. 2011, ch. 164, § 9, p. 463; am. 2012, ch. 190, § 1, p. 510.

STATUTORY NOTES

Amendments.

The 2007 amendment, by ch. 200, in the introductory paragraph in subsection (2), inserted “with no special health needs”; in the introductory paragraph in subsection (4), substituted “persons over twenty-one (21) years of age who have medicare and medicaid coverage” for “elders”; and added subsection (5)(g)(v).

The 2009 amendment, by ch. 34, added subsections (3)(k) and (4)(d); and deleted subsection (5)(i), which read: “Nonemergency medical transportation,” redesignating former subsection (5)(j) as subsection (5)(i).

The 2010 amendment, by ch. 235, in paragraphs (3)(f)(i) and (3)(f)(ii), substituted “persons with intellectual disabilities” for “the mentally retarded.”

The 2011 amendment, by ch. 164, rewrote the section to the extent that a detailed comparison is impracticable.

The 2012 amendment, by ch. 190, added “participants on the aged and disabled waiver and the developmental disability waiver” near the end of paragraph (5)(c).

Federal References.

Section 1905 of the social security act, referred to in paragraphs (3)(c), (3)(h), (3)(j)(i), (5)(g)(i) and (5)(g)(ii), is codified as 42 U.S.C.S. § 1396d.

Section 1915 of the social security act, referred to in paragraph (3)(c), is codified as 42 U.S.C.S. § 1396n.

Section 1902(a)(31) of the social security act, referred to in paragraph (3)(f), is codified as 42 U.S.C.S. § 1396a(a)(31).

Section 1902(a)(10)(E)(ii) of the social security act, referred to in paragraph (3)(j)(ii), is codified as 42 U.S.C.S. § 1396a(a)(10)(E)(ii).

Section 1902(a)(10)(E)(iii) of the social security act, referred to in paragraph (3)(j)(iii), is codified as 42 U.S.C.S. 1396a(a)(10)(E)(iii).

Section 1902(2)(10)(E)(iv) of the social security act, referred to in paragraph (3)(j)(iv), is codified as 42 U.S.C.S. § 1396a(2)(10)(E)(iv).

Section 1933 of the social security act, referred to in paragraph (3)(j)(iv), is codified as 42 U.S.C.S. § 1396u-3.

Compiler's Notes.

For more on the family medicine residency of Idaho, see <http://www.fmr.idaho.org>.

For more on the Idaho state university family medicine residency program, see <http://www.fmed.isu.edu>.

The abbreviations enclosed in parentheses so appeared in the law as enacted.

Effective Dates.

Section 4 of S.L. 2009, ch. 34 declared an emergency retroactively to April 1, 2009 and approved March 17, 2009.

56-256. Preventive health assistance. — (1) The department of health and welfare may establish preventive health assistance benefits available to a medicaid participant in order to provide incentives to promote healthy behavior and responsible use of health care services.

(2) Preventive health assistance benefits are available when the participant complies with recommended preventive care and demonstrates healthy behaviors or conducts other activities as specified in department rule. Preventive health assistance benefits are only available during a participant's period of eligibility.

(3) The uses of preventive health assistance may include, but not be limited to, participant payments for preventive health products and services and participant cost-sharing payments as specified in department rule.

(4) Preventive health assistance benefits may be used to cover delinquent cost-sharing obligations when participants have complied with recommended preventive care as described in department rule.

History.

I.C., § 56-256, as added by 2006, ch. 305, § 1, p. 943; am. 2007, ch. 200, § 6, p. 610.

STATUTORY NOTES

Amendments.

The 2007 amendment, by ch. 200, rewrote the section, correcting terminology, removing

provisions on personal health account funding, use and disposition, and providing for use of preventive health assistance benefits.

56-257. Copayments. — (1) Within the limits of federal medicaid law and regulations, the department of health and welfare shall establish enforceable cost sharing in order to increase the awareness and responsibility of medicaid participants for the cost of their health care and to encourage use of cost-effective care in the most appropriate setting. Copayments established by department rule may include, but not be limited to, the following:

(a) Medicaid services including, but not limited to, chiropractic visits, podiatrist visits, optometrist visits, physical therapy visits, occupational therapy visits, speech therapy visits, outpatient hospital visits and physician office visits;

(b) Inappropriate use of emergency medicaid reimbursed services, including hospital emergency room and emergency transportation; and

(c) Missed appointments with health care providers when it is the practice of the health care provider to charge such copayments to all of their patients regardless of payer.

(2) The director may exempt, subject to federal approval, any group of medicaid participants from the cost-sharing provisions in this section.

History.

I.C., § 56-257, as added by 2006, ch. 305,
§ 1, p. 943; am. 2011, ch. 164, § 10, p. 463.

STATUTORY NOTES

Amendments.

The 2011 amendment, by ch. 164, rewrote the section, providing for copayments within the limits of federal medicaid law and regula-

tion and revising what may be included in copayments established by the department of health and welfare.

56-258, 56-259. [Reserved.]

56-260. Short title. — Sections 56-260 through 56-266, Idaho Code, shall be known and may be cited as the “Medicaid Cost Containment and Health Care Improvement Act.”

History.

I.C., § 56-260, as added by 2011, ch. 164,
§ 11, p. 463.

56-261. Legislative findings and intent. — (1) The legislature finds that the current health care delivery system of payment to medicaid health care providers on a fee for service basis does not provide the appropriate incentives and can be improved by incorporating managed care tools, including capitation and selective contracting, with the objective of moving

toward an accountable care system that results in improved health outcomes.

(2) The legislature intends that the provisions of sections 56-260 through 56-266, Idaho Code, result in the improved health of public assistance recipients while, at the same time, increasing the choices and responsibilities of those recipients. The legislature further intends that these sections result in improved business practices of providers.

(3) The legislature directs the department to pursue opportunities in the medicaid program that result in safe and appropriate discharge from public and private institutions including nursing homes, intermediate care facilities and psychiatric facilities into community settings and that such results should be financially sustainable.

(4) Price increases should be implemented only through specific appropriation authority unless the adjustments are specified in federal law.

History.

I.C., § 56-261, as added by 2011, ch. 164,
§ 12, p. 463.

56-262. Definitions. — The definitions contained in section 56-252, Idaho Code, shall apply to sections 56-260 through 56-266, Idaho Code.

History.

I.C., § 56-262, as added by 2011, ch. 164,
§ 13, p. 463.

56-263. Medicaid managed care plan. — (1) The department shall present to the legislature on the first day of the second session of the sixty-first Idaho legislature a plan for medicaid managed care with focus on high-cost populations including, but not limited to:

- (a) Dual eligibles; and
- (b) High-risk pregnancies.

(2) The medicaid managed care plan shall include, but not be limited to, the following elements:

- (a) Improved coordination of care through primary care medical homes.
- (b) Approaches that improve coordination and provide case management for high-risk, high-cost disabled adults and children that reduce costs and improve health outcomes, including mandatory enrollment in special needs plans, and that consider other managed care approaches.
- (c) Managed care contracts to pay for behavioral health benefits as described in executive order number 2011-01 and in any implementing legislation. At a minimum, the system should include independent, standardized, statewide assessment and evidence-based benefits provided by businesses that meet national accreditation standards.
- (d) The elimination of duplicative practices that result in unnecessary utilization and costs.
- (e) Contracts based on gain sharing, risk-sharing or a capitated basis.
- (f) Medical home development with focus on populations with chronic disease using a tiered case management fee.

History.

I.C., § 56-263, as added by 2011, ch. 164,
§ 14, p. 463.

STATUTORY NOTES**Compiler's Notes.**

For executive order number 2011-01, see

[http://gov.idaho.gov/mediacenter / execorders / eo11 / eo_2011_01.html](http://gov.idaho.gov/mediacenter/execorders/eo11/eo_2011_01.html).

56-264. Rulemaking authority. — In addition to the rulemaking authority granted to the department in this chapter and elsewhere in Idaho Code regarding the medicaid program and notwithstanding any other Idaho law to the contrary, the department shall have the authority to promulgate rules regarding:

(1) Medical services to:

(a) Change the primary case management paid to providers to a tiered payment based on the health needs of the populations that are managed. A lower payment is to be made for healthier populations and a higher payment is to be made for individuals with special needs, disabilities or are otherwise at risk. An incentive payment is to be provided to practices that provide extended hours beyond the normal business hours that help reduce unnecessary higher-cost emergency care;

(b) Provide that a healthy connections referral is no longer required for urgent care as an alternative to higher cost but unnecessary emergency services; and

(c) Eliminate payment for collateral contact;

(2) Mental health services to:

(a) Eliminate administrative requirements for a functional and intake assessment and add a comprehensive diagnostic assessment addendum;

(b) Restrict duplicative skill training from being provided by a mental health provider when the individual has chosen to receive skill training from a developmental disability provider. Mental health providers may not provide training for skills included in the individual's developmental disability plan, but may provide services related to the individual's mental illness that require specialized expertise of mental health professionals, such as management of mental health symptoms, teaching coping skills related to mental health diagnosis, assisting with psychiatric medical appointments and educating individuals about their diagnosis and treatment;

(c) Increase the criteria for accessing the partial care benefit and restrict to those individuals who have a diagnosis of serious and persistent mental illness;

(d) Eliminate the requirement for new annual plans; and

(e) Direct the department to develop an effective management tool for psychosocial rehabilitation services;

(3) In-home care services to:

(a) Eliminate personal care service coordination; and

(b) Restrict duplicative nursing services from a home health agency when nursing services are being provided through the aged and disabled waiver;

(4) Vision services to:

(a) Align coverage requirements for contact lenses with commercial insurers and other state medicaid programs; and

(b) Limit coverage for adults based on chronic care criteria;

(5) Audiology services to eliminate audiology benefits for adults;

(6) Developmental disability services to:

(a) Eliminate payment for collateral contact;

(b) Eliminate supportive counseling benefit;

(c) Reduce annual assessment hours from twelve (12) to four (4) hours and exclude psychological and neuropsychological testing services within these limits;

(d) Reduce plan development payment from twelve (12) to six (6) hours and reduce requirements related to adult developmental disabilities plan development;

(e) Restrict duplicative skill training from being provided by a developmental disabilities provider when an individual has chosen to receive skill training from his mental health provider. The individual may receive skill development services from a developmental disability provider only for skills that are not addressed by the mental health service provider's plan and that relate directly to the individual's developmental disability, such as skills related to activities of daily living and functional independence;

(f) Implement changes to certified family homes pursuant to chapter 35, title 39, Idaho Code, to:

(i) Create approval criteria and process for approving new certified family homes;

(ii) Recertify current certified family homes; and

(iii) Develop applicant and licensing fees to cover certifying and recertifying costs; and

(7) Institutional care services to discharge individuals from institutional settings where such services are no longer necessary.

History.

I.C., § 56-264, as added by 2011, ch. 164,

§ 15, p. 463; am. 2012, ch. 107, § 12, p. 284; am. 2012, ch. 190, § 2, p. 510.

STATUTORY NOTES

Amendments.

This section was amended by two 2012 acts which appear to be compatible and have been compiled together.

The 2012 amendment, by ch. 107, substituted "chapter 35" for "chapter 31" in the introductory paragraph in paragraph (6)(f).

The 2012 amendment, by ch. 190, substituted the last sentence in paragraph (2)(b) for "The individual may choose to receive skill

training from a mental health provider but can not receive skill building simultaneously from two (2) providers"; and, in subsection (6), added the last sentence in paragraph (e) and deleted former paragraph (g), which read, "Move individualized adult budgets to a tiered approach as currently used by the department for children's developmental therapy".

56-265. Provider payment. — (1) Where there is an equivalent, the payment to medicaid providers:

(a) May be up to but shall not exceed one hundred percent (100%) of the

current medicare rate for primary care procedure codes as defined by the centers for medicare and medicaid services; and

(b) Shall be ninety percent (90%) of the current medicare rate for all other procedure codes.

(2) Where there is no medicare equivalent, the payment rate to medicaid providers shall be prescribed by rule.

(3) The department shall, through the annual budget process, include a line item request for adjustments to provider rates. All changes to provider payment rates shall be subject to approval of the legislature by appropriation.

History.

I.C., § 56-265, as added by 2011, ch. 164,
§ 16, p. 463.

STATUTORY NOTES

Compiler's Notes.

For more on the centers for medicare and medicaid services, see <http://www.cms.gov>.

56-266. Authorization to obtain federal approval. — The department is authorized to obtain federal approval for the requirements set forth in sections 56-260 through 56-266, Idaho Code.

History.

I.C., § 56-266, as added by 2011, ch. 164,
§ 17, p. 463.

CHAPTER 3

COUNTY COUNCILS OF PUBLIC ASSISTANCE

SECTION.

56-301. County council of public assistance
— Appointment of members —
Term — Organization.

SECTION.

56-302. Meetings — Quorum.
56-303. Powers and duties.

56-301. County council of public assistance — Appointment of members — Term — Organization. — There is hereby created in each county of this state a council to be known as County Council of Public Assistance. Said council shall consist of five (5) members to be appointed as follows: one (1) member to be a county commissioner to be selected and appointed by the board of county commissioners of his county and to serve at the pleasure of the board of county commissioners, but under such appointment to serve only while he is a county commissioner; four (4) members of the council to be appointed by the governor, not more than two (2) of whom shall be members of the same political faith. The members appointed by the governor shall be for the following terms: one (1) member for one (1) year; one (1) for two (2) years; and two (2) for three (3) years. All appointments by the governor after the first board shall be for a term of three (3) years. Each member so appointed shall serve until his successor is

appointed and qualifies and shall receive no compensation for his services. In the event of a vacancy, except as to the member appointed by the board of county commissioners, the same shall be filled by appointment of the governor, which appointee shall be of the same political faith as his predecessor. The appointment to fill a vacancy shall be for the unexpired term of his predecessor. The council shall organize by the election of a chairman and the county supervisor of public assistance shall be the secretary of said council.

History.

1943, ch. 118, § 1, p. 226.

STATUTORY NOTES**Cross References.**

Nonmedical indigent assistance, § 31-3401

Hospitals for indigent sick, § 31-3501 et seq.

56-302. Meetings — Quorum. — The council shall meet in regular session at least once each month at a time and place within the county to be fixed by resolution of the council. Special meetings may be had at any time upon call of the chairman and notice thereof given by the secretary to the members of the said council. The time and method of giving such notice of special meetings shall be fixed by resolution of the council. A quorum of said council shall consist of three (3) members and a quorum at any meeting legally called may exercise all the powers vested in the council.

History.

1943, ch. 118, § 2, p. 226.

56-303. Powers and duties. — The county council of public assistance shall review, in accordance with plans, rules and regulations approved by the board of health and welfare of the state of Idaho, the administration of public assistance and social services of the state department of health and welfare in the several counties. In the performance of its duties said council shall:

(a) Make periodic reviews of all cases approved for public assistance within the county, for the purpose of determining the continuing eligibility for public assistance of the recipient.

(b) Review all cases heretofore approved for public assistance within the county by the department for the purpose of determining the continuing eligibility of the recipient in regard thereto.

(c) Furnish information to applicants and the public in general, as to who is eligible for public assistance, and the rules and regulations promulgated by the board in regard thereto, to the end that there may be more widespread knowledge of the real purpose of the public assistance program and the administration thereof.

(d) To recommend to the board such rules, regulations, policies and procedure, as in the judgment of the council, shall increase efficiency, effect economy and generally improve the administration of public assistance.

(e) The board shall promulgate all necessary and proper rules and

regulations governing the procedure of the county council of public assistance.

(f) Nothing herein is intended, nor shall be interpreted, to prevent the right of appeal or limit opportunity for a fair hearing before the board; nor as preventing the director of the department of health and welfare from administering the public assistance laws of this state as a single state agency.

History.

1943, ch. 118, § 3, p. 226; 1972, ch. 196, § 12, p. 483; am. 1974, ch. 23, § 169, p. 633.

STATUTORY NOTES

Cross References.

Appeal and fair hearing, § 56-216.
Board of health and welfare, § 56-1005.
Department of health and welfare, § 56-1001 et seq.

Section 182 of S.L. 1974, ch. 23 provided that the act should take effect on and after July 1, 1974.

Effective Dates.

Section 4 of S.L. 1943, ch. 118 declared an emergency. Approved March 2, 1943.

CHAPTER 4

COOPERATIVE WELFARE FUND

SECTION.

- 56-401. Creation of cooperative welfare fund — Purpose.
- 56-402. Sources of cooperative welfare fund.
- 56-403. Budget estimate — Requisition for funds.
- 56-404. Transfer of funds from general fund to welfare fund.
- 56-405. Administration and disbursement of funds.

SECTION.

- 56-406. Procedure for making disbursements.
- 56-407. Transfer of funds from cooperative emergency revenue fund.
- 56-408 — 56-449. [Reserved.]
- 56-450. Health and welfare trust account.
- 56-460. County medical indigency suspense account. [Repealed.]

56-401. Creation of cooperative welfare fund — Purpose. — There is hereby created a trust fund in the state treasury to be known as the cooperative welfare fund, and all money deposited therein is perpetually appropriated for public welfare purposes.

History.

1941, ch. 180, § 1, p. 376.

STATUTORY NOTES

Compiler's Notes.

S.L. 1943, ch. 31, § 1 specifically repealed the initiative measure known as the Senior Citizens' Grants Act. Section 2 revived all acts and parts of acts repealed or in any manner abridged by the Senior Citizens' Grants Act, and declared them in full force and effect, as

fully as though the said Senior Citizens' Grants Act had never existed, and particularly, and without limiting the generality of the reviving clause, declared chs. 180 and 181 of S.L. 1941 to be revived and in full force and effect. See also *Scott v. Gossett*, 66 Idaho 329, 158 P.2d 804 (1945).

56-402. Sources of cooperative welfare fund. — There shall be placed in the cooperative welfare fund all federal grants-in-aid made to the state of Idaho under titles I, IV and X, and part 3 of title V of the act of congress known as the Social Security Act, as amended; all cooperative funds received from the counties under the provisions of the public assistance law; and any funds received from federal, state, personal, or other sources, subject to administration by the director of the department of health and welfare for public assistance and welfare purposes.

History.

1941, ch. 180, § 2, p. 376; 1972, ch. 196, § 13, p. 483; am. 1974, ch. 23, § 170, p. 633.

STATUTORY NOTES

Federal References.

Titles I, IV, and X of the social security act, referred to in this section, are codified as 42 U.S.C.S. § 301 et seq., 42 U.S.C.S. § 601 et seq., and 42 U.S.C.S. § 1201 et seq.

Part 3 of title V of the social security act was codified as 42 USCS § 721 et seq., but was repealed by Act Jan. 2, 1968, P.L. 90-248.

56-403. Budget estimate — Requisition for funds. — At the beginning of each calendar quarter, or oftener, the director of the department of health and welfare shall make and file with the state board of examiners for examination a claim upon the general fund for funds appropriated to the department of health and welfare in an amount estimated to be sufficient to meet the needs of such department for the period. Such claim shall be supported by such estimates of anticipated expenditures as the board may require.

History.

1941, ch. 180, § 3, p. 376; 1972, ch. 196, § 14, p. 483; am. 1974, ch. 23, § 171, p. 633.

STATUTORY NOTES

Cross References.

Director of department of health and welfare, §§ 56-1002, 56-1003.

State board of examiners, § 67-2001 et seq.

56-404. Transfer of funds from general fund to welfare fund. — Upon the approval of the claim upon the general fund by the state board of examiners, the state controller and the state treasurer shall transfer the approved amount from the general fund to the cooperative welfare fund. Any unexpended balance in the cooperative welfare fund at the end of any month shall be subject to disbursement in accordance with the terms of this act in any subsequent month.

History.

1941, ch. 180, § 4, p. 376; am. 1994, ch. 180, § 108, p. 420.

STATUTORY NOTES

Cross References.

Cooperative welfare fund, § 56-401.
General fund, § 67-1205.
State board of examiners, § 67-2001 et seq.
State controller, § 67-1001 et seq.
State treasurer, § 67-1201 et seq.

Compiler's Notes.

The term "this act" refers to S.L. 1941, ch. 180, which is compiled as §§ 56-401 to 56-407.

Effective Dates.

Section 241 of S.L. 1994, ch. 180 provided that such act should become effective on and after the first Monday in January, 1995 [January 2, 1995] if the amendment to the Constitution of Idaho changing the name of the state auditor to state controller [1994 S.J.R. No. 109, p. 1493] was adopted at the general election held on November 8, 1994. Since such amendment was adopted, the amendment to this section by § 108 of S.L. 1994, ch. 180 became effective January 2, 1995.

56-405. Administration and disbursement of funds. — (a) Disbursements from the cooperative welfare fund, involving the participation of federal funds, which may be made available only upon condition that they are to be administered by a single state agency, shall be made upon claims approved by the director of the department of health and welfare.

(b) All other disbursements from the cooperative welfare fund shall be made upon claims submitted to and approved by the state board of examiners as are other claims against the state.

History.

1941, ch. 180, § 5, p. 376; 1972, ch. 196, § 15, p. 483; am. 1974, ch. 23, § 172, p. 633.

STATUTORY NOTES

Cross References.

Cooperative welfare fund, § 56-401.
Director of department of health and welfare, §§ 56-1002, 56-1003.

State board of examiners, § 67-2001 et seq.

56-406. Procedure for making disbursements. — For disbursements as described in section 56-405(a), Idaho Code, the director shall make requisition to the state controller upon vouchers, showing the director's approval of such disbursements, and certifying to the participation therein of federal funds as described in said section 56-405(a), Idaho Code. Upon the presentation of such vouchers, the state controller shall issue warrants on the state treasury against the cooperative welfare fund, payable to the persons named by the director in the amounts allowed by it, as indicated upon the vouchers. Such warrants shall be transmitted by the state controller to the director of the department of health and welfare for distribution. Requisitions and vouchers for disbursements described in section 56-405(a), Idaho Code, shall be subject to examination by the state controller in order to determine that the account is in proper form, that the totals carried thereon are correct, and that there are funds in the state treasury out of which the same may lawfully be paid.

History.

1941, ch. 180, § 6, p. 376; 1972, ch. 196,

§ 16, p. 483; am. 1974, ch. 23, § 173, p. 633; am. 1994, ch. 180, § 109, p. 420.

STATUTORY NOTES

Cross References.

Cooperative welfare fund, § 56-401.
Director of department of health and welfare, §§ 56-1002, 56-1003.
State controller, § 67-1001 et seq.

Effective Dates.

Section 182 of S.L. 1974, ch. 23 provided that the act should take effect on and after July 1, 1974.
Section 241 of S.L. 1994, ch. 180 provided

that such act should become effective on and after the first Monday in January, 1995 [January 2, 1995] if the amendment to the Constitution of Idaho changing the name of the state auditor to state controller [1994 S.J.R. No. 109, p. 1493] was adopted at the general election held on November 8, 1994. Since such amendment was adopted, the amendment to this section by § 109 of S.L. 1994, ch. 180 became effective January 2, 1995.

56-407. Transfer of funds from cooperative emergency revenue fund. — All money in the cooperative emergency revenue fund on the effective date of this act are hereby transferred and appropriated to the cooperative welfare fund; and all obligations incurred against the cooperative emergency revenue fund which are outstanding on such date shall be payable from the cooperative welfare fund; and all references to the cooperative emergency revenue fund shall hereafter be construed to apply to the cooperative welfare fund.

History.

1941, ch. 180, § 7, p. 376.

STATUTORY NOTES

Cross References.

Cooperative welfare fund, § 56-401.

refers to the effective date of S.L. 1941, ch. 180, which was March 15, 1941.

Compiler's Notes.

The phrase "the effective date of this act"

Effective Dates.

Section 9 of S.L. 1941, ch. 180 declared an emergency. Approved March 15, 1941.

56-408 — 56-449. [Reserved.]

56-450. Health and welfare trust account. — The director of the department of health and welfare may receive, on behalf of the department, any money or real or personal property donated, bequeathed, devised, or conditionally granted to the department. Such moneys received directly or derived from the sale of such property shall be deposited by the state treasurer in a special account to be known as the "Health and Welfare Trust Account", which is hereby established, reserved, set aside, appropriated and made available until expended, used, and administered to carry out the terms or conditions of such donation, bequest, devise, or grant. Pending such expenditure or use, surplus moneys in the health and welfare trust account shall be invested by the state treasurer in the manner provided for idle state moneys in the state treasury by section 67-1210, Idaho Code. Interest received on all such investments shall be paid into the health and welfare trust account.

The director shall provide annually, to the legislative council through the director of legislative services, an accounting of the health and welfare trust account setting forth the sources, applications and balance of moneys within the account.

History.

I.C., § 56-450, as added by 1981, ch. 118, § 1, p. 202; am. 1993, ch. 327, § 26, p. 1186; am. 1996, ch. 159, § 18, p. 502.

STATUTORY NOTES**Cross References.**

Director of department of health and welfare, §§ 56-1002, 56-1003.

Director of legislative services, § 67-428.

State treasurer, § 67-1201 et seq.

56-460. County medical indigency suspense account. [Repealed.]**STATUTORY NOTES****Compiler's Notes.**

This section, which comprised I.C., § 56-460, as added by 1987, ch. 170, § 3, p. 334, was to have been repealed by S.L. 1990, ch. 87, § 1, effective October 1, 1991. However, S.L. 1990, ch. 87 was itself repealed by § 1 of

S.L. 1991, ch. 233 which became law without the governor's signature and thus the repeal by S.L. 1990, ch. 87 never took effect. Nevertheless § 14 of S.L. 1991, ch. 233 repealed the section effective October 1, 1991.

CHAPTER 5**FOOD STAMP REVOLVING FUND****SECTION.**

56-501. Food stamp revolving fund created — Appropriation.

56-502. Defining and limiting use of fund.

56-503. Bonding and insurance of fund — Costs.

SECTION.

56-504. Reversion of food stamp revolving fund to general fund.

56-501. Food stamp revolving fund created — Appropriation. —

There is hereby perpetually appropriated to the division of public assistance in the department of public welfare, or any successor thereto, out of any moneys in the general fund not otherwise appropriated, the sum of \$100,000.00 to be deposited in the cooperative emergency revenue fund [cooperative welfare fund] for the creation of a permanent revolving fund to be known as the food stamp revolving fund, to be administered by the division of public assistance, or any successor thereto, for the purpose of enabling the state of Idaho to cooperate with the Surplus Marketing Administration in the United States Department of Agriculture, or any successor thereto, in distributing surplus agricultural products to needy persons and families under an arrangement known as the stamp plan.

History.

1941, ch. 137, § 1, p. 271.

STATUTORY NOTES**Cross References.**

General fund, § 67-1205.

Compiler's Notes.

The department of health and welfare now carries on the functions of the former department of public welfare.

The bracketed insertion was added by the compiler to reflect the 1941 transfer of funds from the cooperative emergency revenue fund to the cooperative welfare fund. See § 56-407.

The Surplus Marketing Administration, referred to in this section, existed within the

United States department of agriculture from 1933 to 1943.

56-502. Defining and limiting use of fund. — All moneys in the food stamp revolving fund shall be used exclusively for the purchase of food order stamps from the United States Department of Agriculture; such stamps to be sold to needy persons or families subject to the provisions of the food stamp plan entered into with the Surplus Marketing Administration, or any successor thereto. All moneys received from the sale of such stamps or from the redemption of such stamps by the United States Department of Agriculture shall be deposited with the state treasurer and the amount thereof credited to such revolving fund.

History.

1941, ch. 137, § 2, p. 271.

STATUTORY NOTES

Cross References.

State treasurer, § 67-1201 et seq.

ferred to in this section, existed within the United States department of agriculture from 1933 to 1943.

Compiler's Notes.

The Surplus Marketing Administration, re-

56-503. Bonding and insurance of fund — Costs. — Such bonds and insurance as may be deemed necessary or advisable for preserving and safeguarding the funds herein appropriated shall be secured, and the costs of such bonds and insurance shall be paid out of funds appropriated to the division of public assistance, or any successor thereto, for administrative expenses.

History.

1941, ch. 137, § 3, p. 271.

56-504. Reversion of food stamp revolving fund to general fund. — If and when the need for the food stamp revolving fund shall no longer exist, the division of public assistance, or its successor, shall so advise the state board of examiners, which said board shall thereupon order that the funds herein appropriated revert to the general fund and said funds shall thereupon be so transferred.

History.

1941, ch. 137, § 4, p. 271.

STATUTORY NOTES

Cross References.

General fund, § 67-1205.

State board of examiners, § 67-2001 et seq.

Effective Dates.

Section 5 of S.L. 1941, ch. 137 declared an emergency. Approved March 14, 1941.

CHAPTER 6

YOUTH CONSERVATION

SECTION.

56-601. Policy.

56-602. Idaho youth conservation project created.

56-603. Requirements for participants — Summer camp.

56-604. Duties of park and recreation board.

SECTION.

56-605. Purposes of project.

56-606. Authority of the park and recreation board.

56-607. Compensation of participants.

56-608. Laws inapplicable to participants.

56-609. Workmen's compensation benefits.

56-601. Policy. — It is hereby declared to be the policy of this state to conserve and develop the youth resources thereof, which is the source of our state's future citizens and taxpayers, and likewise to conserve and develop the natural resources of our state as a trust held by us for these future citizens, and it is the urgent duty of the state to conserve the youth as well as the natural resources thereof.

History.

1963, ch. 126, § 1, p. 370.

56-602. Idaho youth conservation project created. — There is hereby created the Idaho youth conservation project, which shall be placed under the jurisdiction and supervision of the Idaho park and recreation board.

History.

1963, ch. 126, § 2, p. 370; am. 1970, ch. 178, § 1, p. 522; am. 1974, ch. 8, § 19, p. 35.

STATUTORY NOTES

Cross References.

Park and recreation board, § 67-4221.

56-603. Requirements for participants — Summer camp. — (a) Participants in the Idaho youth conservation project shall be citizens of the United States and the state of Idaho, of good character and health who are not less than fourteen (14) years nor more than seventeen (17) years of age.

(b) In order to participate in the project an individual must agree to comply with the rules and regulations as set up by the park [and recreation] board for the government of those taking part in the project.

(c) Participation shall be for the duration of one (1) summer camp as set by the park and recreation board.

History.

1963, ch. 126, § 3, p. 370; am. 1970, ch. 178,

§ 2, p. 522; am. 1974, ch. 8, § 20, p. 35; am. 1991, ch. 330, § 1, p. 854.

STATUTORY NOTES

Cross References.

Park and recreation board, § 67-4221.

compiler to provide the complete name of the referenced agency.

Compiler's Notes.

The bracketed insertion was added by the

56-604. Duties of park and recreation board. — It shall be the duty of the park and recreation board to expend such funds as it deems necessary to provide staff, select workers, equip, supply and maintain all phases of said project as funds are available.

History.

1963, ch. 126, § 4, p. 370; am. 1970, ch. 178,
§ 3, p. 522; am. 1974, ch. 8, § 21, p. 35.

STATUTORY NOTES

Cross References.

Park and recreation board, § 67-4221.

56-605. Purposes of project. — Purpose of such project shall be twofold; (1) the conservation of youth in the most positive way by introducing them to the satisfactions of constructive work and outdoor life, the rewards of which they can witness and evaluate for themselves; (2) to promote the conservation of our natural resources within an effective framework specifically tailored to the needs of Idaho for future programs to conserve timber, water, soil, forage and recreation resources through the use of our youth resources.

History.

1963, ch. 126, § 5, p. 370.

56-606. Authority of the park and recreation board. — In order to carry out the purposes of this act the park and recreation board shall have the authority to:

1. Formulate rules and regulations for operation of the project.
2. Appoint, in accordance with the policy and regulations of the department, such qualified personnel as it deems necessary for the efficient and economic discharge of the functions of the project. Compensation and benefits of all such appointees to be fixed as may be provided by law and the policies and regulations of the department.
3. Establish adequate standards of safety, health, and morals for participants.
4. To enter into such agreements with and otherwise cooperate with such other governmental agencies, departments and instrumentalities as may be necessary in carrying out the purposes of this act.
5. To formulate such other rules and regulations, establish such other procedures, and enter into such contracts and agreements and generally perform such functions as it may deem necessary or desirable to carry out the provisions of this act.

6. To provide a regular schedule of work, on-the-job training and recreation as falls naturally within the philosophy and program scope of the youth conservation project.

History.

1963, ch. 126, § 6, p. 370; am. 1970, ch. 178,
§ 4, p. 522; am. 1974, ch. 8, § 22, p. 35.

STATUTORY NOTES

Compiler's Notes.

The term "this act" refers to S.L. 1963, ch. 126, which is compiled as §§ 56-601 to 56-609.

56-607. Compensation of participants. —

A.(1) The base compensation of participants shall be set by the park and recreation board.

(2) The park and recreation board shall establish procedures whereby each participant may make an allotment to his parent, dependent, legal guardian, or any fund established for his benefit, of part of the periodic compensation to which he is entitled by this act, and such allotment shall be paid directly to the person or fund in which favor it is made.

B. In addition to compensation authorized in subsection A, participants shall be furnished with such quarters, subsistence, transportation, equipment, clothing, medical services, and hospital services as the park and recreation board may deem necessary or appropriate for their needs.

History.

1963, ch. 126, § 7, p. 370; am. 1970, ch. 178, § 5, p. 522; am. 1974, ch. 8, § 23, p. 35; am. 1991, ch. 330, § 2, p. 854.

STATUTORY NOTES

Compiler's Notes.

The term "this act" refers to S.L. 1963, ch. 126, which is compiled as §§ 56-601 to 56-609.

Section 26 of S.L. 1974, ch. 8 provided that the act should take effect on and after July 1, 1974.

Effective Dates.

Section 6 of S.L. 1970, ch. 178 declared an emergency. Approved March 13, 1970.

56-608. Laws inapplicable to participants. — Existing provisions of law with respect to hours of work, rate of compensation, sick leave, vacation and unemployment compensation shall not be applicable to any individual because of participation in the project.

History.

1963, ch. 126, § 8, p. 370.

56-609. Workmen's compensation benefits. — (a) Participants shall, for the purpose of the administration of the workmen's [worker's] compensation law, be deemed to be civil employees of the state.

History.
1963, ch. 126, § 9, p. 370; am. 1991, ch. 330, § 3, p. 854.

STATUTORY NOTES

Compiler’s Notes.
Following the 1991 amendment of this section, the section has a subsection (a) but no subsection (b).
The bracketed insertion was added by the compiler to reflect the change in the heading

of title 72, Idaho Code, governing worker’s compensation.

Effective Dates.
Section 10 of S.L. 1963, ch. 126 declared an emergency. Approved March 15, 1963.

CHAPTER 7

RIGHTS OF THE BLIND AND PERSONS WITH PHYSICAL DISABILITIES

- SECTION.

56-701. Policy of state.

56-701A. Definitions.

56-702. Right to full and free use of streets, highways, public buildings and public facilities.

56-703. Right to full and equal accommodations in all common carriers, hotels, lodging houses, places of public accommodation or other public places.

56-704. Right to use of assistance dog — Liability.
- SECTION.

56-704A. Rights of persons with dogs-in-training — Liability.

56-705. Civil liability for intentional violation of statutes protecting disabled persons.

56-706. Interference with rights or activities — Penalty.

56-707. Right to be employed in employment supported in whole or in part by public funds — Restriction — Use of sick leave.

56-701. Policy of state. — It is the policy of this state to encourage and enable the blind, the visually impaired, the hearing impaired, and the otherwise physically disabled to participate fully in the social and economic life of the state and to engage in remunerative employment.

History.
1969, ch. 69, § 1, p. 212; am. 1984, ch. 147, § 4, p. 342; am. 2010, ch. 235, § 48, p. 542.

STATUTORY NOTES

Cross References.
Commission for the blind and visually impaired, § 67-5401 et seq.
Precautions to be taken by pedestrians or drivers concerning blind or hearing impaired persons, §§ 18-5811, 18-5812.
Right to be accompanied by guide dog, penalty for violation, § 18-5812A.

State school for deaf and blind, admission to, § 33-3407.

Amendments.
The 2010 amendment, by ch. 235, substituted “visually impaired” for “visually handicapped.”

RESEARCH REFERENCES

A.L.R. — Validity and construction of state statutes requiring construction of handi-

capped access facilities in buildings open to the public. 82 A.L.R.4th 121.

56-701A. Definitions.— As used in this chapter and chapter 58, title 18, Idaho Code:

(1) “Assistance device” means a cane or walking stick, predominantly white or metallic in color, with or without red tip, or a manual or motorized wheelchair or similar scooter, or other similar devices that enhance the safety or mobility of a disabled person.

(2) “Assistance dog” means a dog that has been trained as a guide dog for a blind or visually impaired person, a hearing dog for a hearing impaired person, or a service dog for a physically disabled person.

(3) “Disabled person” means a hearing, visually or physically impaired person.

(4) “Dog-in-training” means a dog being specifically trained to develop social, environmental and other skills needed for admission to a training school or other program for assistance dogs. Dogs-in-training shall wear a jacket, collar, scarf or other similar article identifying it as a dog-in-training.

(5) “Guide dog” means a dog that has been specially trained to aid a particular blind or visually impaired person.

(6) “Hearing dog” means a dog that has been specially trained to aid a particular hearing impaired person.

(7) “Hearing impaired person” means a person who has a hearing impairment manifested by a speech discrimination score of forty percent (40%) or more in the better ear with appropriate correction as certified by a licensed otologist, licensed audiologist, or the Idaho division of vocational rehabilitation.

(8) “Physically impaired person” means any person with any substantial physical disability which prevents normal participation in community or life activities as are available and participated in by persons with no such afflictions or conditions of the same age and sex.

(9) “Service dog” means a dog that has been specially trained to aid a particular physically disabled person with a physical disability other than sight or hearing impairment.

(10) “Visually impaired person” means any person who is blind, totally blind, partially blind or otherwise visually impaired meaning such person has central visual acuity not exceeding 20/200 in the better eye, with corrected lenses, as measured by the Snellen test, or visual acuity greater than 20/200, but with a limitation in the field of vision such that the widest diameter of the visual field subtends an angle not greater than twenty (20) degrees.

History.

I.C., § 56-701A, as added by 1984, ch. 147, § 5, p. 342; am. 1992, ch. 58, § 5, p. 168; am.

1994, ch. 159, § 2, p. 359; am. 1997, ch. 267, § 8, p. 763; am. 2002, ch. 345, § 34, p. 963; am. 2010, ch. 235, § 49, p. 542.

STATUTORY NOTES

Amendments.

The 2010 amendment, by ch. 235, in subsection (10), deleted “or ‘visually handicapped person’” following “visually impaired person” and substituted “otherwise visually impaired” for “otherwise visually handicapped.”

Compiler's Notes.

For more on Idaho division of vocational rehabilitation, see <http://www.vr.idaho.gov/index.shtml>.

56-702. Right to full and free use of streets, highways, public buildings and public facilities. — The blind, the visually impaired, the hearing impaired, and the otherwise physically disabled have the same right as the able-bodied to the full and free use of the streets, highways, sidewalks, walkways, public buildings, public facilities, and other public places.

History.

1969, ch. 69, § 2, p. 212; am. 1984, ch. 147, § 6, p. 342; am. 2010, ch. 235, § 50, p. 542.

STATUTORY NOTES

Amendments.

The 2010 amendment, by ch. 235, substituted “visually impaired” for “visually handicapped.”

56-703. Right to full and equal accommodations in all common carriers, hotels, lodging houses, places of public accommodation or other public places. — The blind, the visually impaired, the hearing impaired, and the otherwise physically disabled are entitled to full and equal accommodations, advantages, facilities, and privileges of all common carriers, airplanes, motor vehicles, and railroad trains, motor buses, street-cars, boats or any other public conveyances or modes of transportation, hotels, lodging places, places of public accommodations, amusement or resort, and other places to which the general public is invited, subject only to the conditions and limitations established by law and applicable alike to all persons.

History.

1969, ch. 69, § 3, p. 212; am. 1984, ch. 147, § 7, p. 342; am. 2010, ch. 235, § 51, p. 542.

STATUTORY NOTES

Cross References.

Denial of use of facilities by persons accompanied by guide dog for the blind prohibited, § 18-5812B.

Amendments.

The 2010 amendment, by ch. 235, substituted “visually impaired” for “visually handicapped.”

56-704. Right to use of assistance dog — Liability. — Every disabled person shall have the right to be accompanied by an assistance dog, in any of the places listed in section 56-703, Idaho Code, without being required to pay an extra charge for the assistance dog; provided that he shall be liable for any damage done to the premises or facilities by his dog.

History.

1969, ch. 69, § 4, p. 212; am. 1984, ch. 147, § 8, p. 342; am. 1997, ch. 267, § 9, p. 763.

STATUTORY NOTES

Cross References.

Blind persons accompanied by guide dogs, public transportation and public place, penalty, § 18-5812A.

56-704A. Rights of persons with dogs-in-training — Liability. —

Every person who is specially training or socializing a dog for the purpose of being an assistance dog shall have the right to be accompanied by the dog in any of the places listed in section 56-703, Idaho Code, without being required to pay an extra charge for the dog if the accompaniment is part of the dog's training or socialization to become an assistance dog. The person accompanying the dog-in-training shall carry and upon request display an identification card issued by a recognized school for assistance dogs or organization which serves disabled persons. The person shall be fully liable for any damages done to the premises or facilities by the dog and no liability to other persons shall be attached to the owner, lessor or manager of the property, arising out of activities permitted by this chapter.

History.

I.C., § 56-704A, as added by 1983, ch. 75, § 2, p. 161; am. 1992, ch. 58, § 6, p. 168; am. 1994, ch. 159, § 3, p. 359; am. 1997, ch. 267, § 10, p. 763.

56-705. Civil liability for intentional violation of statutes protecting disabled persons. — Civil action may be brought against any person intentionally violating the provisions of section 18-5811, 18-5811A, 18-5812 or 18-5812A, Idaho Code, with judgment awarded upon proof of the elements to a preponderance of the evidence. As a part of any such civil judgment, a successful plaintiff shall be awarded punitive damages in an amount equal to all other damages suffered by the plaintiff, but in no event less than five hundred dollars (\$500). The failure of a disabled person to use an assistance device or assistance dog shall not be held to constitute nor be evidence of contributory negligence in any civil action.

History.

I.C., § 56-705, as added by 1997, ch. 267, § 12, p. 763.

STATUTORY NOTES**Prior Laws.**

Former § 56-705, which comprised S.L. 1969, ch. 69, § 5, p. 212; am. 1984, ch. 147, § 9, p. 342; am. 1992, ch. 58, § 7, p. 168, was repealed by S.L. 1997, ch. 267, § 11, effective July 1, 1997.

56-706. Interference with rights or activities — Penalty. — Any person or persons, firm or corporation, or the agent of any person or persons, firm or corporation who denies or interferes with admittance to or enjoyment of the public facilities enumerated in this chapter or otherwise interferes with the rights of a totally or partially blind, hearing impaired, or otherwise disabled person under this chapter shall be guilty of a misdemeanor.

History.

1969, ch. 69, § 6, p. 212; am. 1984, ch. 147, § 10, p. 342.

STATUTORY NOTES

Cross References.

Penalty for misdemeanor when not otherwise provided, § 18-113.

56-707. Right to be employed in employment supported in whole or in part by public funds — Restriction — Use of sick leave. —

(1) The blind, the visually impaired, the hearing impaired, and the otherwise disabled shall be employed in the state service, the service of the political subdivisions of the state, in the public schools, and in all other employment supported in whole or in part by public funds on the same terms and conditions as the able-bodied, unless it is shown that the particular disability prevents the performance of the work involved.

(2) Persons employed as provided in subsection (1) of this section, may use accrued sick leave for the purpose of obtaining guide dogs and necessary training.

History.

1969, ch. 69, § 7, p. 212; am. 1984, ch. 147, § 11, p. 342; am. 2010, ch. 235, § 52, p. 542.

STATUTORY NOTES

Amendments.

The 2010 amendment, by ch. 235, substituted “visually impaired” for “visually handicapped” in subsection (1).

Effective Dates.

Section 13 of S.L. 1984, ch. 147 declared an emergency. Approved March 31, 1984.

CHAPTER 8

HARD-TO-PLACE CHILDREN

SECTION.

56-801. Legislative intent.

56-802. Definitions.

56-803. Establishment of program — Promulgation of rules and regulations.

SECTION.

56-804. Dissemination of information to families.

56-805. Financial aid — Period.

56-806. Use of gifts or grants.

56-801. Legislative intent. — The purpose and intent of this act is to benefit hard-to-place children residing in foster or institutional homes at state expense by providing the stability and security of permanent homes, and in so doing, achieve a decrease of total state expense by the reduction of costly foster and institutional care. Accordingly this act shall apply only to hard-to-place children.

History.

1974, ch. 61, § 1, p. 1139.

STATUTORY NOTES

Compiler's Notes.

The term "this act" refers to S.L. 1974, ch. 61, which is compiled as §§ 56-801 to 56-806.

56-802. Definitions. — For the purposes of this act:

(1) "Hard-to-place child" means a child who is difficult to place for adoption or guardianship because of ethnic background, race, color, age, sibling grouping, or physical or emotional disability.

(2) "Department" means the department of health and welfare.

History.

1974, ch. 61, § 2, p. 1139; am. 2001, ch. 92, § 1, p. 231; am. 2010, ch. 235, § 53, p. 542.

STATUTORY NOTES

Cross References.

Department of health and welfare, § 56-1001 et seq.

"physical or emotional handicap" in subsection (1).

Amendments.

The 2010 amendment, by ch. 235, substituted "physical or emotional disability" for

Compiler's Notes.

The term "this act" refers to S.L. 1974, ch. 61, which is compiled as §§ 56-801 to 56-806.

56-803. Establishment of program — Promulgation of rules and regulations. — The department is responsible for establishing and implementing the provisions of this act. The board of health and welfare is authorized to promulgate such rules and regulations as are necessary to administer this act.

The department shall keep records for purposes of evaluating the effectiveness of this act's implementation.

History.

1974, ch. 61, § 3, p. 1139.

STATUTORY NOTES

Cross References.

Board of health and welfare, § 56-1005.

Compiler's Notes.

The term "this act" refers to S.L. 1974, ch. 61, which is compiled as §§ 56-801 to 56-806.

56-804. Dissemination of information to families. — The department shall disseminate information to prospective adoptive families and families who wish to be appointed legal guardians of a child in the state's custody, as to the availability of hard-to-place children, adoption and guardianship procedures, and of the existence of financial aid to adoptive families and guardians of hard-to-place children.

History.

1974, ch. 61, § 4, p. 1139; am. 2001, ch. 92, § 2, p. 231.

56-805. Financial aid — Period. — Financial aid to families adopting or becoming guardians of hard-to-place children shall be awarded by the department as follows:

(1) Persons who have applied to adopt the hard-to-place child and to receive subsidies for the care and support of the hard-to-place child shall be evaluated as to their suitability as adoptive parents by means of an adoptive home study. Persons who are caring for a hard-to-place child in the state’s custody for whom reunification or adoption is not an option, and who wish to be appointed legal guardians of the child and to receive subsidies for the care and support of the child, shall be evaluated as to their suitability as guardians by means of a guardianship study.

(2) Financial assistance shall be not more than the amount that would be paid for foster or institutional care for the child if the placement for adoption or guardianship had not taken place. Assistance may be provided families adopting or becoming guardians for hard-to-place children until such child is eighteen (18) years of age, parents are no longer legally responsible for the child, or until the parents are no longer providing support for the child.

After an adoption with a subsidy is finalized or a guardianship with subsidy has been ordered by the court and the court has released the child from the state’s legal custody, the family is independent of the department except for an annual evaluation by the department of the need for continued subsidy and the amount of the subsidy.

(3) Payment of the costs of medical services shall be made directly to the physician or provider of the services according to the department’s established procedures.

(4) Payment of the cost of nonrecurring adoption or guardianship expenses is limited to the following: reasonable and necessary adoption or guardianship fees, court costs, attorney’s fees, and other expenses which are directly related to the legal adoption or guardianship of a child with special needs and which are not incurred in violation of state or federal laws.

(5) Eligibility for the benefits payable and amounts thereof shall be determined on a case-by-case basis by the department as set forth in the rules promulgated by the state board of health and welfare.

History. § 1, p. 82; am. 1991, ch. 238, § 1, p. 573; am. 1974, ch. 61, § 5, p. 1139; am. 1982, ch. 54, 2001, ch. 92, § 3, p. 231.

STATUTORY NOTES

Effective Dates.
Section 2 of S.L. 1982, ch. 54 declared an emergency. Approved March 12, 1982.

56-806. Use of gifts or grants. — All gifts or grants received from private sources for the purpose of this bill shall be used to offset state costs incurred pursuant to this act.

History.
1974, ch. 61, § 6, p. 1139.

STATUTORY NOTES

Compiler's Notes.

The term "this act" refers to S.L. 1974, ch. 61, which is compiled as §§ 56-801 to 56-806.

Effective Dates.

Section 7 of S.L. 1974, ch. 61 declared an emergency. Approved March 15, 1974.

CHAPTER 9

TELECOMMUNICATIONS SERVICE ASSISTANCE

SECTION.

56-901. Telecommunications service assistance program — Definitions.

56-902. Assistance rate discount — Form — Applicable services — Amount — Application.

SECTION.

56-903. Assistance eligibility.

56-904. Recovery of telecommunications service revenue reductions — Administration.

56-905. Severability.

56-901. Telecommunications service assistance program — Definitions. — (1) A telecommunications service assistance program is hereby established within the department of health and welfare to provide eligible recipients with a reduction in costs of telecommunications services to promote universal service. The program shall be administered by the department of health and welfare in accordance with the provisions of this chapter and rules and regulations promulgated in compliance with chapter 52, title 67, Idaho Code, to administer the program. The telecommunications service assistance program adopted shall maximize federal "lifeline" and "link-up" contributions to Idaho's low-income customers.

(2) For the purposes of this chapter, a "telecommunications carrier" means a telephone corporation providing telecommunication services for compensation within this state, and shall include municipal, cooperative, or mutual nonprofit telephone companies, and telecommunication corporations providing wireless, cellular, personal communications services and mobile radio services for compensation.

History.

I.C., § 56-901, as added by 1987, ch. 328, § 1, p. 686; am. 1998, ch. 37, § 8, p. 157.

STATUTORY NOTES

Cross References.

Department of health and welfare, § 56-1001 et seq.

emergency and provided this act shall be in full force and effect on and after its passage and approval. Approved March 17, 1998.

Effective Dates.

Section 12 of S.L. 1998, ch. 37 declared an

56-902. Assistance rate discount — Form — Applicable services — Amount — Application. — (1) Telecommunication carriers providing residential basic local exchange service shall provide assistance in the form of a monthly discount to eligible subscribers of residential basic local exchange service of three dollars and fifty cents (\$3.50) or an amount authorized by the federal communication commission whichever is greater. In no case will the discount exceed the rate charged for the grade of

residential basic local exchange service subscribed to by each eligible individual. The Idaho telecommunications service assistance plan shall only be used to provide for a single residence line at the principal residence of the eligible subscriber.

(2) The providers of residential basic local exchange service and the Idaho department of health and welfare shall comply with all requirements expressly provided by federal order, regulation and statute for eligible subscribers to qualify for the federal “lifeline” and “link-up” telephone assistance program. In accordance with federal law, the Idaho public utilities commission may grant waivers to carriers of residential basic local exchange service from providing certain services to eligible subscribers.

History.

I.C., § 56-902, as added by 1987, ch. 328,
§ 1, p. 686; am. 1998, ch. 37, § 9, p. 157.

STATUTORY NOTES

Cross References.

Department of health and welfare, § 56-1001 et seq.
Public utilities commission, § 61-201 et seq.

Effective Dates.

Section 12 of S.L. 1998, ch. 37 declared an emergency and provided this act shall be in full force and effect on and after its passage and approval. Approved March 17, 1998.

56-903. Assistance eligibility. — (1) In order to be eligible for the telecommunications service assistance program, an applicant shall be the head of a household and shall meet narrowly targeted eligibility criteria based solely on income or factors directly related to income established by the department of health and welfare. The department of health and welfare shall develop procedures for taking applications for assistance and for determining and certifying program eligibility. Such applications shall contain the disclosure of information authorization necessary to process the assistance discounts. Individuals who qualify for assistance under this chapter must be periodically recertified by the department of health and welfare.

(2) At least once each year the department shall provide an electronic list of names, addresses and, if applicable, telephone numbers of all eligible recipients to each telecommunications carrier designated as an eligible telecommunications carrier by the public utilities commission. The eligible telecommunications carrier shall determine from the list those recipients to whom the company provides service.

History.

I.C., § 56-903, as added by 1987, ch. 328,
§ 1, p. 686; am. 1998, ch. 37, § 10, p. 157.

STATUTORY NOTES

Cross References.

Board of health and welfare, § 56-1005.

Public utilities commission, § 61-201 et seq.

Effective Dates.

Section 12 of S.L. 1998, ch. 37 declared an emergency and provided this act shall be in

full force and effect on and after its passage and approval. Approved March 17, 1998.

56-904. Recovery of telecommunications service revenue reductions — Administration. — (1) The Idaho public utilities commission shall determine and impose a uniform statewide monthly surcharge on each end user's business, residential and wireless access service. The surcharge shall be an amount sufficient to reimburse each carrier of residential basic local exchange service for the total amount of telephone assistance discounts provided as well as the carrier's and the administrator's expenses of administering the plan. Such surcharge shall be effective concurrent with the discounts given eligible subscribers. The surcharge shall be explicitly stated on end user billings but shall not be imposed on eligible subscribers.

(2) The Idaho public utilities commission may adopt rules or issue orders necessary to receive matching federal low income telephone assistance and to implement the Idaho telephone assistance program, including procedures for adjustment and true-up of the subscriber surcharge. The commission may contract with a neutral third party to collect the surcharge, distribute assistance revenues, and perform other tasks as assigned.

(3) All carriers of telecommunications services shall remit the assistance surcharge revenues to the fund administrator designated by the commission on a monthly basis, unless less frequent remittances are authorized by order of the public utilities commission. The administrator shall distribute telecommunication service assistance program revenues monthly to eligible telecommunication carriers in an amount that equals their costs of administering the program and the monthly discount provided to eligible subscribers.

(4) The surcharge imposed in subsection (1) of this section, when collected from customers of mobile wireless carriers, shall be imposed only on customers with a place of primary use in Idaho. As used in this section and as defined in 4 U.S.C. section 124, "place of primary use" means the residential street address or the primary business street address in Idaho where the customer's use of the wireless service primarily occurs.

History.

§ 1, p. 686; am. 1998, ch. 37, § 11, p. 157; am. I.C., § 56-904, as added by 1987, ch. 328, 2002, ch. 311, § 1, p. 885.

STATUTORY NOTES**Cross References.**

Public utilities commission, § 61-201 et seq.

emergency and provided this act shall be in full force and effect on and after its passage and approval. Approved March 17, 1998.

Effective Dates.

Section 12 of S.L. 1998, ch. 37 declared an

56-905. Severability. — The provisions of this act are hereby declared to be severable and if any provision of this act or the application of such provision to any person or circumstance is declared invalid for any reason,

such declaration shall not affect the validity of remaining portions of this act.

History.

I.C., § 56-905, as added by 1987, ch. 328,
§ 1, p. 686.

STATUTORY NOTES

Compiler's Notes.

The term "this act" refers to S.L. 1987, ch.

328, which is compiled as §§ 56-901 to 56-905.

CHAPTER 10

DEPARTMENT OF HEALTH AND WELFARE

SECTION.

56-1001. Definitions.
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- 56-1047. Federal-state agreements — Authorized — Effect as to federal licenses.
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SECTION.

- 56-1050. Injunction proceedings.
56-1051. Prohibited uses.
56-1052. Impounding of materials.
56-1053. Penalties.
56-1054. Health quality planning.

56-1001. Definitions. — Whenever used or referred to in this chapter, unless a different meaning clearly appears from the context, the following terms shall have the following meanings:

(1) "Board" means the board of health and welfare as created in section 56-1005, Idaho Code.

(2) "Department" means the department of health and welfare.

(3) "Director" means the director of the department of health and welfare.

(4) "Isolation" means the separation of infected persons, or of persons suspected to be infected, from other persons to such places, under such conditions, and for such time as will prevent transmission of the infectious agent.

(5) "Laboratory" means not only facilities for biological, serological, biophysical, cytological and pathological tests, but also facilities for the chemical or other examination of materials from water, air or other substances.

(6) "Person" means any individual, association, partnership, firm, joint stock company, trust, estate, political subdivision, public or private corporation, state or federal governmental department, agency or instrumentality, or any other legal entity which is recognized by law as the subject of rights and duties.

(7) "Public swimming pool" means an artificial structure, and its appurtenances, which contains water more than two (2) feet deep which is used or intended to be used for swimming or recreational bathing, and which is for the use of any segment of the public pursuant to a general invitation but not an invitation to a specific occasion or occasions. The term does not include a swimming pool operated solely for and in conjunction with a hotel, motel or other place of lodging, or a trailer park, apartment, condominium or any other residential facility containing multiple dwellings.

(8) "Quarantine" means the restriction placed on the entrance to and exit from the place or premises where an infectious agent or hazardous material exists.

(9) "State" means the state of Idaho.

(10) "Substantive" means that which creates, defines or regulates the rights of any person or implements, interprets or prescribes law or policy, but does not include statements concerning only the internal management of the department and not affecting private rights or procedures available to the public.

History.

I.C., § 56-1001, as added by 2000, ch. 132,

§ 38, p. 309; am. 2002, ch. 191, § 1, p. 550;
am. 2003, ch. 240, § 1, p. 619.

STATUTORY NOTES

Compiler's Notes.

Section 39 of S.L. 2000, ch. 132 provided: "(1) This act shall be in full force and effect on and after July 1, 2000, except that the Division of Environmental Quality shall have one (1) year thereafter to accomplish necessary changes to complete the physical transition to the new department.

"(2) Notwithstanding any other provisions of Chapter 52, Title 67, Idaho Code, the Administrative Rules Coordinator shall redesign-

nate all references to the Division of Environmental Quality which appear in the master rule database maintained by the coordinator, to the Department of Environmental Quality without further republication or promulgation, to comply with the provisions of this act. Until such time as a republication of a rule occurs, any reference in a rule to the Division of Environmental Quality shall mean the Department of Environmental Quality."

56-1002. Department of health and welfare — Creation — Administrative regions. — (1) There is created and established in the state government a department of health and welfare which shall, for the purposes of section 20, article IV of the constitution of the state of Idaho, be an executive department of the state government. The executive and administrative power of this department shall be vested in the director of the department who shall be appointed by and serve at the pleasure of the governor, with the advice and consent of the senate.

(2) The department shall be organized into such administrative and general services divisions as may be necessary in order to efficiently administer the department. Each division shall be headed by a division administrator who shall be appointed by and serve at the pleasure of the director with the concurrence of the board.

(3) In order to provide more effective and economical access to the state health and social services by the people of Idaho, the governor is hereby authorized to establish substate administrative regions. In the designation of these regions specific consideration shall be given to the geographic and economic convenience of the citizens included therein. Each substate administrative region shall be headed by a regional director who shall be appointed by and serve at the pleasure of the director with the concurrence of the board.

History.

I.C., § 56-1002, as added by 2000, ch. 132, § 38, p. 309.

56-1003. Powers and duties of the director. — The director shall have the following powers and duties:

(1) All of the powers and duties of the department of public health, the department of health, the board of health and all nonenvironmental protection duties of the department of health and welfare are hereby vested to the director of the department of health and welfare. Provided however, that oversight of the department and rulemaking and hearing functions relating to public health and licensure and certification standards shall be vested in the board of health and welfare. Except when the authority is vested in the board of health and welfare under law, the director shall have all such powers and duties as may have been or could have been exercised by his predecessors in law, including the authority to adopt, promulgate, and

enforce rules, and shall be the successor in law to all contractual obligations entered into by predecessors in law. All rulemaking proceedings and hearings of the director shall be governed by the provisions of chapter 52, title 67, Idaho Code.

(2) The director shall, pursuant and subject to the provisions of the Idaho Code, and the provisions of this chapter, formulate and recommend to the board rules, codes and standards, as may be necessary to deal with problems related to personal health, and licensure and certification requirements pertinent thereto, which shall, upon adoption by the board, have the force of law relating to any purpose which may be necessary and feasible for enforcing the provisions of this chapter including, but not limited to, the maintenance and protection of personal health. Any such rule or standard may be of general application throughout the state or may be limited as to times, places, circumstances or conditions in order to make due allowance for variations therein.

(3) The director, under the rules, codes or standards adopted by him, shall have the general supervision of the promotion and protection of the life, health and mental health of the people of this state. The powers and duties of the director shall include, but not be limited to, the following:

- (a) The issuance of licenses and permits as prescribed by law and by the rules of the board;
- (b) The supervision and administration of laboratories and the supervision and administration of standards of tests for environmental pollution, chemical analyses and communicable diseases. The director may require that laboratories operated by any city, county, institution, person, firm or corporation for health or environmental purposes conform to standards set by the board of health and welfare and the board of environmental quality;
- (c) The supervision and administration of a mental health program, which shall include services for the evaluation, screening, custody and treatment of the mentally ill and those persons suffering from a mental defect, or mental defects;
- (d) The enforcement of minimum standards of health, safety and sanitation for all public swimming pools within the state;
- (e) The supervision and administration of the various schools, hospitals and institutions that were the responsibility of the board of health;
- (f) The supervision and administration of services dealing with the problems of alcoholism including, but not limited to, the care and rehabilitation of persons suffering from alcoholism;
- (g) The establishment of liaison with other governmental departments, agencies and boards in order to effectively assist other governmental entities with the planning for the control of or abatement of health problems. All of the rules and standards adopted by the board shall apply to state institutions;
- (h) The supervision and administration of an emergency medical service program including, but not limited to, assisting other governmental agencies and local governmental units, in providing first aid emergency medical services and for transportation of the sick and injured;

(i) The supervision and administration of administrative units whose responsibility shall be to assist and encourage counties, cities, other governmental units, and industries in the control of and/or abatement of health problems;

(j) The enforcement of all laws, rules, codes and standards relating to health.

(4) The director, when so designated by the governor, shall have the power to apply for, receive on behalf of the state, and utilize any federal aid, grants, gifts, gratuities, or moneys made available through the federal government.

(5) The director shall have the power to enter into and make contracts and agreements with any public agencies or municipal corporations for facilities, land, and equipment when such use will have a beneficial, recreational, or therapeutic effect or be in the best interest in carrying out the duties imposed upon the department.

The director shall also have the power to enter into contracts for the expenditure of state matching funds for local purposes. This subsection will constitute the authority for public agencies or municipal corporations to enter into such contracts and expend money for the purposes delineated in such contracts.

(6) The director is authorized to adopt an official seal to be used on appropriate occasions, in connection with the functions of the department or the board, and such seal shall be judicially noticed. Copies of any books, records, papers and other documents in the department shall be admitted in evidence equally with the originals thereof when authenticated under such seal.

(7) The director, under rules adopted by the board of health and welfare, shall have the power to impose and enforce orders of isolation and quarantine to protect the public from the spread of infectious or communicable diseases or from contamination from chemical or biological agents, whether naturally occurring or propagated by criminal or terrorist act.

(a) An order of isolation or quarantine issued pursuant to this section shall be a final agency action for purposes of judicial review. However, this shall not prevent the director from reconsidering, amending or withdrawing the order. Judicial review of orders of isolation or quarantine shall be *de novo*. The court may affirm, reverse or modify the order and shall affirm the order if it appears by a preponderance of the evidence that the order is reasonably necessary to protect the public from a substantial and immediate danger of the spread of an infectious or communicable disease or from contamination by a chemical or biological agent.

(b) If the director has reasonable cause to believe a chemical or biological agent has been released in an identifiable place, including a building or structure, an order of quarantine may be imposed to prevent the movement of persons into or out of that place, for a limited period of time, for the purpose of determining whether a person or persons at that place have been contaminated with a chemical or biological agent which may create a substantial and immediate danger to the public.

(c) Any person who violates an order of isolation or quarantine shall be guilty of a misdemeanor.

History.

I.C., § 56-1003, as added by 2000, ch. 132,

§ 38, p. 309; am. 2003, ch. 240, § 2, p. 619; am. 2006, ch. 416, § 1, p. 1282.

STATUTORY NOTES**Cross References.**

Board of environmental quality, § 39-107.

Penalty for misdemeanor not otherwise provided, § 18-113.

Amendments.

The 2006 amendment, by ch. 416, in subsection (1), inserted "oversight of the depart-

ment and" in the first sentence, in the second sentence, added "Except when the authority is vested in the board of health and welfare under law" at the beginning and deleted "in those circumstances when the authority to adopt, promulgate, and enforce such rules is not vested in the board of health and welfare" following "and enforce rules".

56-1004. Director — Additional powers and duties. — (1) The director shall exercise the following powers and duties in addition to all other powers and duties inherent in the position:

(a) Prescribe such rules as may be necessary for the administration of the department, the conduct and duties of the employees, the orderly and efficient management of department business, and the custody, use and preservation of department records, papers, books and property belonging to the state;

(b) Employ such personnel as may be deemed necessary, prescribe their duties and fix their compensation within the limits provided by the state personnel system law;

(c) Administer oaths for all purposes required in the discharge of his duties;

(d) Prescribe the qualifications of all personnel of the department on a nonpartisan merit basis, in accordance with the Idaho personnel system law, provided however, that the administrators in charge of any division of the department, and the administrators in charge of the state hospital north, state hospital south, and southwest Idaho treatment center shall serve at the pleasure of the director;

(e) Create such units, sections and subdivisions as are or may be necessary for the proper and efficient functioning of the department.

(2) The department is empowered to acquire, by purchase, lease or exchange, any property which in the judgment of the department is needful for the operation of the facilities and programs for which it is responsible and to dispose of, by sale, lease or exchange, any property which in the judgment of the department is not needful for the operation of the same.

History.

I.C., § 56-1004, as added by 2000, ch. 132,

§ 38, p. 309; am. 2009, ch. 15, § 1, p. 41; am. 2011, ch. 102, § 4, p. 260.

STATUTORY NOTES**Cross References.**

Southwest Idaho treatment center, § 66-115.

State hospital north and state hospital south, § 66-115.

State personnel system, § 67-5301 et seq.

Amendments.

The 2009 amendment, by ch. 15, deleted "state veterans homes" preceding "state hospital north" in subsection (1)(d), removing administrators in charge of state veterans' homes from the department of health and

welfare director's powers and duties, see § 65-202.

The 2011 amendment, by ch. 102, substi-

tuted "southwest Idaho treatment center" for "Idaho state school and hospital" in paragraph (1)(d).

56-1004A. Criminal history and background checks. — (1) To assist in the protection of children and vulnerable adults, the legislature hereby authorizes the department of health and welfare to conduct criminal history and background checks of individuals who provide care or services to vulnerable adults or children and are identified in rule as being required to have a criminal history and background check.

(2) The criminal history and background check will be a fingerprint-based check of state and national records and may include information from the following:

- (a) Statewide criminal identification bureau;
- (b) Federal bureau of investigation (FBI);
- (c) National crime information center;
- (d) Statewide sex offender registry;
- (e) Idaho transportation department driving records;
- (f) Adult and child protection registries;
- (g) Nurse aide registry; and
- (h) Department of health and human services office of the inspector general list of excluded individuals and entities.

(3) The department of health and welfare shall promulgate rules to further define those individuals who are required to have a background check and the effective date. Each individual shall complete an application, which includes a notarized signature, on forms provided by the department. The completed application authorizes the department to obtain and release information in accordance with state and federal law. The applicant must disclose all information requested, including information on past convictions, driver's license revocations, and known adult or child protection findings. Once an application has been completed, the employer, at its discretion, may allow the individual to provide care or services prior to the individual completing fingerprinting and pending completion of the criminal history and background check by the department. The department shall promulgate rules defining the time frame for submitting the application. Under no circumstances may the individual be allowed to provide care or services where the employer has reviewed the completed application and the individual has disclosed a designated crime as set forth in rule.

(4) The department shall review the information received from the criminal history and background check and determine whether the applicant has a criminal or other relevant record that would disqualify the individual. The department shall determine which crimes disqualify the applicant and for what period of time according to promulgated rules. The process for the check and the issuance of a clearance or denial is set forth in department rules. The applicant shall be provided an opportunity for a formal review of a denial. The department shall communicate clearance or denial to the applicant and the applicant's employer.

(5) Applicants are responsible for the cost of the background check except where otherwise provided by department rules.

(6) The department, or an employer of an applicant, who acts in reasonable reliance on the results of the criminal history and background check in making an employment decision, is immune from liability for that decision when it is based on such results.

(7) The department, its officers and employees are immune from liability for the consequences of including or excluding classes of individuals in the criminal history and background check process.

(8) Clearance through the criminal history and background check process is not a determination of suitability for employment.

(9) Effective until September 30, 2007, or when federal funding is no longer available, the legislature hereby authorizes the department of health and welfare to participate in a federal pilot project to conduct criminal history and background checks of providers, employees and contractors who have access to patients in long-term care settings. Long-term care facilities or providers include nursing facilities, institutional care facilities for people with intellectual disabilities, residential or assisted living facilities, long-term care hospitals or hospitals with swing beds, and home health and hospice providers. The criminal history and background checks for the long-term care providers, employees and contractors will be funded through the federal grant at no cost to the long-term care providers, employees or contractors until September 30, 2007, or the federal funding is no longer available.

History.

I.C., § 56-1004A, as added by 2005, ch. 312,

§ 1, p. 970; am. 2006, ch. 281, § 1, p. 864; am. 2010, ch. 235, § 54, p. 542.

STATUTORY NOTES

Cross References.

Bureau of criminal identification, § 67-3003.

Central sexual offender registry, § 18-8305.

Amendments.

The 2006 amendment, by ch. 281, in the section heading, deleted "pilot project" from the end; in subsection (1), deleted "and for the purpose of participating in a pilot project" following "protection of children and vulnerable adults," and substituted the language beginning "checks of individuals who provide care" for "checks of providers, employees and contractors who have access to patients in long-term care settings," and deleted the last two sentences, which read: "Long-term care facilities or providers include nursing facilities, institutional care facilities for the mentally retarded, residential or assisted living facilities, long-term care hospitals or hospitals with swing beds, and home health and hospice providers. The criminal history and background checks for long-term care providers, employees and contractors will be funded through the federal grant at no cost to the long-term care providers, employees, or contractors."; added subsection (2)(h); rewrote

subsection (3), which formerly read: "Each individual who has patient access is required to complete the criminal history and background check process. The department of health and welfare shall promulgate rules to further define those individuals and the effective date. Each applicant must sign forms provided by the department authorizing the department to obtain and release information in accordance with state and federal law. The applicant must disclose all information requested, including information on past convictions, driver's license revocations, and known adult or child protection findings. Once this disclosure is made, the department shall make a preliminary determination as to whether the individual may have access to individuals in a long-term care setting on a provisional basis pending the final determination. Long-term care facilities or providers may not allow an individual to provide care or have patient access until the applicant is given a provisional status."; in subsection (4), substituted "promulgated rules" for "existing rules" in the second sentence, and deleted "existing" preceding "department rules" in the third sentence; rewrote subsection (5), which formerly read: "Applicants who knowingly fail

to disclose information on the forms provided or who falsify information may be subject to criminal penalties under chapter 32, title 18, Idaho Code.”; and added subsections (7) and (9), and redesignated former subsection (7) as (8).

The 2010 amendment, by ch. 235, substituted “people with intellectual disabilities” for “the mentally retarded” in the second sentence in subsection (9).

Compiler’s Notes.

For national crime information center, see

<http://www.fas.org/irp/agency/doj/fbilis/ncic.htm>.

Effective Dates.

Section 2 of S.L. 2005, ch. 312 provided “The provisions of this act shall be null, void and of no force and effect on and after September 30, 2007, or when federal funding is no longer available for the costs, whichever occurs first.” Section 2 of S.L. 2006, ch. 281 repealed the provisions of § 2 of S.L. 2005, ch. 312, voiding the delayed repeal of this section.

56-1005. Board — Composition — Officers — Compensation — Powers — Subpoena — Depositions — Review — Rules. — (1) The board of health and welfare shall consist of eleven (11) members, seven (7) members of which shall be appointed by the governor, with the advice and consent of the senate. The members appointed by the governor may be removed by the governor for cause. Each member of the board appointed by the governor shall be a citizen of the United States, a resident of the state of Idaho, and a qualified elector. Not more than four (4) members of the board appointed by the governor shall be from any one (1) political party. Of the members of the board appointed by the governor, four (4) members shall be chosen with due regard to their knowledge and interest in health and social services, two (2) members shall be chosen based on their experience in business or finance, and one (1) member shall be selected as a representative of the public at large. The voting members shall be appointed to assure appropriate geographic representation of the state of Idaho. The other four (4) members of the board, who shall be nonvoting members, shall be:

- (a) The chairperson of the senate health and welfare committee, or the chair’s designee;
- (b) The chairperson of the house of representatives health and welfare committee, or the chair’s designee;
- (c) The director of the department of health and welfare, who shall serve as the board’s secretary; and
- (d) A representative of the office of the governor, as designated by the governor.

(2) The members of the board of health and welfare appointed by the governor, serving on the effective date of this act shall continue in office as members of the board of health and welfare. All members of the board of health and welfare appointed by the governor shall serve four (4) year terms.

(3) The voting members of the board annually shall elect a chairman and a vice chairman, who shall be voting members of the board. The board shall hold meetings no less than once every quarter. Special meetings of the board may be called by the chairman of the board, by a majority of the voting members of the board or, on written request, by the director of the department of health and welfare. A majority of the voting members shall be necessary to constitute a quorum at any regular or special meeting and the action of the majority of members present shall be the action of the board.

The members of the board shall be compensated as provided in section 59-509(p), Idaho Code.

(4) The board, in furtherance of its duties under law and under its rules, shall have the power to administer oaths, certify to official acts, and to issue subpoenas for the attendance of witnesses and the production of papers, books, accounts, documents and testimony. The board may, if a witness refuses to attend or testify, or to produce any papers required by such subpoenas, report to the district court in and for the county in which the proceeding is pending, by petition, setting forth that due notice has been given of the time and place of attendance of said witnesses, or the production of said papers, that the witness has been properly summoned, and that the witness has failed and refused to attend or produce the papers required by this subpoena before the board, or has refused to answer questions propounded to him in the course of said proceedings, and ask an order of said court compelling the witness to attend and testify and produce said papers before the board. The court, upon the petition of the board, shall enter an order directing the witness to appear before the court at a time and place to be fixed by the court in such order, the time to be not more than ten (10) days from the date of the order, and then and there shall show cause why he has not attended and testified or produced said papers before the board. A copy of said order shall be served upon said witness. If it shall appear to the court that said subpoena was regularly issued by the board and regularly served, the court shall thereupon order that said witness appear before the board at the time and place fixed in said order, and testify or produce the required papers. Upon failure to obey said order, said witness shall be dealt with for contempt of court.

(5) The director, his designee, or any party to the action may, in an investigation or hearing before the board, cause the deposition or interrogatory of witnesses or parties residing within or without the state, to be taken in the manner prescribed by law for like depositions and interrogatories in civil actions in the district court of this state, and to that end may compel the attendance of said witnesses and production of books, documents, papers and accounts.

(6) Any person aggrieved by an action or inaction of the department of health and welfare shall be afforded an opportunity for a fair hearing upon request therefor in writing pursuant to chapter 52, title 67, Idaho Code, and the rules promulgated thereunder. In those cases where the board has been granted the authority to hold such a hearing pursuant to a provision of the Idaho Code, the hearing may be conducted by the board at a regular or special meeting, or the board may designate hearing officers, who shall have the power and authority to conduct hearings in the name of the board at any time and place. In any hearing, a member of the board or hearing officer designated by it, shall have the power to administer oaths, examine witnesses, and issue in the name of the board subpoenas requiring the testimony of witnesses and the production of evidence relevant to any matter in the hearing.

(7) Any person adversely affected by a final determination of the board, may secure judicial review by filing a petition for review as prescribed under

the provisions of chapter 52, title 67, Idaho Code. The petition for review shall be served upon the chairman of the board, the director of the department, and upon the attorney general of the state of Idaho. Such service shall be jurisdictional and the provisions of this section shall be the exclusive procedure for appeal.

(8) The board, by the affirmative vote of four (4) of its voting members, may adopt, amend or repeal the rules, codes, and standards of the department, that are necessary and feasible in order to carry out its duties and responsibilities and to enforce the laws of this state.

The rules and orders so adopted and established shall have the force and effect of law and may deal with any matters deemed necessary and feasible for protecting the health of the state.

(9) All rulemaking proceedings and hearings of the board shall be governed by the provisions of chapter 52, title 67, Idaho Code.

(10) In addition to any other powers and duties granted to the board under law, the board shall:

- (a) Advise the director and the governor on department fiscal, policy and administrative matters;
- (b) Review and advise the director regarding the department's strategic plan and performance measures;
- (c) Develop goals and standards to measure department efficiency and effectiveness; and
- (d) Review and advise the director and the governor on department initiatives.

(11) The board shall provide an annual report to the governor and to the legislature prior to the start of each legislative session, addressing:

- (a) The key department fiscal and policy issues;
- (b) The department's managerial and overall performance; and
- (c) The major proposed and ongoing departmental initiatives.

History.

I.C., § 56-1005, as added by 2000, ch. 132, § 38, p. 309; am. 2006, ch. 416, § 2, p. 1282;

am. 2007, ch. 247, § 1, p. 726; am. 2007, ch. 315, § 1, p. 941; am. 2009, ch. 109, § 1, p. 360.

STATUTORY NOTES

Cross References.

Attorney general, § 67-1401 et seq.
Contempt, § 7-601 et seq.

Amendments.

The 2006 amendment, by ch. 416, in the introductory language of subsection (1), inserted "eleven (11) members" and substituted "of which" for "who" in the first sentence; inserted "appointed by the governor" in the second and third sentences of subsection (1) and twice in subsection (2); rewrote the fourth sentence of subsection (1), which formerly read: "All members of the board shall be chosen with due regard to their knowledge and interest in health and social services"; added subsections (1)(a) to (d); substituted "chairman and a vice chairman, and shall

hold meetings no less than once every two (2) months. Special meetings of the board may be called by the chairman of the board, by a majority of the voting members of the board or, on written request, by the director of the department of health and welfare" for "chairman, a vice chairman, and a secretary, and shall hold such meetings as may be necessary for the orderly conduct of its business, and such meetings shall be held from time to time on seventy-two (72) hours' notice of the chairman or a majority of the members"; substituted "this law" for "this act" in subsection (4); in subsection (8), substituted "five (5)" for "four (4)" and "its duties and responsibilities" for "the purposes and provisions of this act"; and added subsections (10) to (11)(c).

This section was amended by two 2007 acts

which appear to be compatible and have been compiled together.

The 2007 amendment, by ch. 247, in the introductory paragraph in subsection (1), added the next-to-last sentence, and in the last sentence, inserted “who shall be nonvoting members”; in subsections (1)(c) and (1)(d), deleted “and as a nonvoting member” and “who shall serve as a nonvoting member” from the end, respectively; in subsection (3), in the first sentence, inserted “voting members of the” and “who shall be voting members of the board,” and in the fourth sentence, substituted “A majority of the voting members” for “Five (5) members”; and in subsection (8), substituted “four (4) of its voting members” for “five (5) of its members.”

The 2007 amendment, by ch. 315, updated the section reference in subsection (3).

The 2009 amendment, by ch. 109, substituted “once every quarter” for “once every two (2) months” in the second sentence in subsection (3).

Compiler’s Notes.

The phrase “the effective date of this act” in subsection (2) refers to the effective date of S.L. 2000, ch. 132, which was July 1, 2000.

Effective Dates.

Section 2 of S.L. 2007, ch. 247 declared an emergency. Approved March 28, 2007.

56-1006. Title superseded. — Except with respect to environmental protection functions, wherever the words “board of health” appear in the Idaho Code, they shall mean the board of health and welfare, and wherever the words “administrator of health” appear in the Idaho Code, they shall mean the director of the department of health and welfare, and wherever the words “department of health” appear in the Idaho Code, they shall mean the department of health and welfare.

History.

I.C., § 56-1006, as added by 2000, ch. 132, § 38, p. 309.

56-1007. Collection of fees for services. — The department of health and welfare is hereby authorized to charge and collect reasonable fees, established by rule, for any service rendered by the department. The fee may be determined by a sliding scale according to income or available assets. The department is hereby authorized to require information concerning the total income and assets of each person receiving services in order to determine the amount of the fee to be charged.

History.

I.C., § 56-1007, as added by 2000, ch. 132, § 38, p. 309.

56-1008. Criminal violation — Penalty. — Any person who willfully or negligently violates any of the provisions of the public health laws or the terms of any lawful notice, order, permit, standard, or rule issued pursuant thereto, shall be guilty of a misdemeanor.

History.

I.C., § 56-1008, as added by 2000, ch. 132, § 38, p. 309.

STATUTORY NOTES

Cross References.

Penalty for misdemeanor when not otherwise provided, § 18-113.

56-1009. Investigation — Inspection — Right of entry — Violation — Enforcement — Penalty — Injunctions. — (1) The director shall cause investigations to be made upon receipt of information concerning an alleged violation of this chapter or of any rule, permit or order promulgated thereunder, and may cause to be made such other investigations as the director shall deem advisable.

(2) For the purpose of enforcing any provision of this chapter or any rule authorized in this chapter, the director or the director's designee shall have the authority to:

(a) Conduct a program of continuing surveillance and of regular or periodic inspection of actual or potential health hazards;

(b) Enter at all reasonable times upon any private or public property, upon presentation of appropriate credentials, for the purpose of inspecting or investigating to ascertain possible violations of this chapter or of rules, permits or orders adopted and promulgated by the director or the board;

(c) All inspections and investigations conducted under the authority of this chapter shall be performed in conformity with the prohibitions against unreasonable searches and seizures contained in the fourth amendment to the constitution of the United States and section 17, article I, of the constitution of the state of Idaho. The state shall not, under the authority granted by this chapter, conduct warrantless searches of private property in the absence of either consent from the property owner or occupier or exigent circumstances such as a public health emergency;

(d) Any district court in and for the county in which the subject property is located is authorized to issue a search warrant to the director upon a showing of (i) probable cause to suspect a violation, or (ii) the existence of a reasonable program of inspection. Any search warrant issued under the authority of this chapter shall be limited in scope to the specific purposes for which it is issued and shall state with specificity the manner and the scope of the search authorized.

(3) Whenever the director determines that any person is in violation of any provision of this chapter or any rule, permit or order issued or promulgated pursuant to this chapter, the director may commence either of the following:

(a) Administrative enforcement action.

(i) Notice. The director may commence an administrative enforcement action by issuing a written notice of violation. The notice of violation shall identify the alleged violation with specificity, shall specify each provision of the chapter, rule, regulation, permit or order which has been violated, and shall state the amount of civil penalty claimed for each violation. The notice of violation shall inform the person to whom it is directed of an opportunity to confer with the director or the director's designee in a compliance conference concerning the alleged violation. A written response may be required within fifteen (15) days of receipt of the notice of violation by the person to whom it is directed.

(ii) Scheduling compliance conference. If a recipient of a notice of violation contacts the department within fifteen (15) days of the receipt

of the notice, the recipient shall be entitled to a compliance conference. The conference shall be held within twenty (20) days of the date of receipt of the notice, unless a later date is agreed upon between the parties. If a compliance conference is not requested, the director may proceed with a civil enforcement action as provided in paragraph (b) of this subsection.

(iii) Compliance conference. The compliance conference shall provide an opportunity for the recipient of a notice of violation to explain the circumstances of the alleged violation and, where appropriate, to present a proposal for remedying damage caused by the alleged violation and assuring future compliance.

(iv) Consent order. If the recipient and the director agree on a plan to remedy damage caused by the alleged violation and to assure future compliance, they may enter into a consent order formalizing their agreement. The consent order may include a provision providing for payment of any agreed civil penalty.

(v) Effect of consent order. A consent order shall be effective immediately upon signing by both parties and shall preclude any civil enforcement action for the same alleged violation. If a party does not comply with the terms of the consent order, the director may seek and obtain, in any appropriate district court, specific performance of the consent order and such other relief as authorized in this chapter.

(vi) Failure to reach consent order. If the parties cannot reach agreement on a consent order within sixty (60) days after the receipt of the notice of violation or if the recipient does not request a compliance conference pursuant to paragraph (a)(ii) of this section, the director may commence and prosecute a civil enforcement action in district court, in accordance with subsection (b) of this section.

(b) Civil enforcement action. The director may initiate a civil enforcement action through the attorney general as provided in section 56-1010, Idaho Code. Civil enforcement actions shall be commenced and prosecuted in the district court in and for the county in which the alleged violation occurred, and may be brought against any person who is alleged to have violated any provision of this chapter or any rule, permit or order which has become effective pursuant to this chapter. Such action may be brought to compel compliance with any provision of this chapter or with any rule, permit or order promulgated hereunder and for any relief or remedies authorized in this chapter. The director shall not be required to initiate or prosecute an administrative action before initiating a civil enforcement action.

(4) No civil or administrative proceeding may be brought to recover for a violation of any provision of this chapter or a violation of any rule, permit or order issued or promulgated pursuant to this chapter, more than two (2) years after the director had knowledge or ought reasonably to have had knowledge of the violation.

(5) Monetary penalties.

(a) Any person determined in a civil enforcement action to have violated any provision of this chapter or any rule, permit or order promulgated

pursuant to this chapter shall be liable for a civil penalty not to exceed ten thousand dollars (\$10,000) per violation or one thousand dollars (\$1,000) for each day of a continuing violation, whichever is greater. The method of recovery of said penalty shall be by a civil enforcement action in the district court in and for the county where the violation occurred. All civil penalties collected under this chapter shall be paid into the general fund of the state. Parties to an administrative enforcement action may agree to a civil penalty as provided in this subsection.

(b) The imposition or computation of monetary penalties may take into account the seriousness of the violation and any good faith efforts by the person to comply with the law.

(6) In addition to such civil penalties, any person who has been determined to have violated the provisions of this chapter or the rules, permits or orders promulgated thereunder, shall be liable for any expense incurred by the state in enforcing the chapter, or in enforcing or terminating any nuisance, cause of sickness or health hazard.

(7) No action taken pursuant to the provisions of this chapter or of any other health law shall relieve any person from any civil action and damages that may exist for injury or damage resulting from any violation of this chapter or of the rules, permits and orders promulgated thereunder.

(8) In addition to, and notwithstanding other provisions of this chapter, in circumstances of emergency creating conditions of imminent and substantial danger to the public health, the prosecuting attorney or the attorney general may institute a civil action for an immediate injunction to halt any activity in violation of the provisions of this chapter or rules, permits and orders promulgated thereunder. In such action the court may issue an ex parte restraining order.

History.

I.C., § 56-1009, as added by 2001, ch. 110,
§ 2, p. 373.

STATUTORY NOTES

Cross References.

Attorney general, § 67-1401 et seq.

General fund, § 67-1205.

56-1010. Commencement of civil enforcement actions — Criminal actions authorized — Duties of attorney general. — Upon request of the director, it shall be the duty of the attorney general to institute and prosecute civil enforcement actions or injunctive actions as provided in section 56-1009, Idaho Code, and to prosecute actions or proceedings for the enforcement of any criminal provisions of this chapter. In addition, when deemed by the director to be necessary, the director may retain or employ private counsel. The attorney general may delegate the authority and duty under this section to prosecute criminal actions to the prosecuting attorney of the county in which such a criminal action may arise.

History.

I.C., § 56-1010, as added by 2001, ch. 110,
§ 3, p. 373..

STATUTORY NOTES**Cross References.**

Attorney general, § 67-1401 et seq.

56-1011. Emergency medical services — Statement of intent. — It is the purpose of the legislature of the state of Idaho in the adoption of sections 56-1011 through 56-1023, Idaho Code, to recognize the importance of the delivery of emergency medical services and to provide reasonable regulation of the same. For this purpose, the provisions of section 54-1804, Idaho Code, shall not be so construed as to prohibit or penalize emergency medical services rendered by a person authorized to render emergency medical services by sections 56-1011 through 56-1023, Idaho Code, if such emergency medical service is rendered under the responsible supervision and control of a licensed physician.

History.

I.C., § 39-140, as added by 1976, ch. 187,
§ 1, p. 675; am. and redesign. 1996, ch. 26, § 2,

p. 61; am. and redesign. 2001, ch. 110, § 4, p. 373; am. 2009, ch. 189, § 1, p. 611; am. 2010, ch. 79, § 34, p. 133.

STATUTORY NOTES**Amendments.**

The 2009 amendment, by ch. 189, substituted "56-1023" for "56-1018B" in two places.

The 2010 amendment, by ch. 79, updated the first section reference in the last sentence.

Compiler's Notes.

This section was formerly compiled as § 39-140. In 1996, this section was redesignated as § 39-139. In 2001, this section was again redesignated as § 56-1011.

56-1012. Definitions. — As used in sections 56-1011 through 56-1023, Idaho Code:

(1) "Advanced emergency medical technician" means a person who has met the qualifications for licensure as set forth in sections 56-1011 through 56-1023, Idaho Code, is licensed by the EMS bureau under sections 56-1011 through 56-1023, Idaho Code, carries out the practice of emergency care within the scope of practice determined by the commission and practices under the supervision of an Idaho licensed physician.

(2) "Agency" means any organization licensed by the EMS bureau that operates an air medical service, ambulance service or nontransport service.

(3) "Air ambulance" means any privately or publicly owned fixed wing aircraft or rotary wing aircraft used for, or intended to be used for, the transportation of persons experiencing physiological or psychological illness or injury who may need medical attention during transport. This may include dual or multipurpose vehicles which otherwise comply with sections 56-1011 through 56-1023, Idaho Code, and specifications established by board rule.

(4) "Air medical service" means an agency licensed by the EMS bureau that responds to requests for patient care and transportation from hospitals and EMS agencies using a fixed wing aircraft or rotary wing aircraft.

(5) "Ambulance" means any privately or publicly owned motor vehicle or nautical vessel used for, or intended to be used for, the transportation of sick or injured persons who may need medical attention during transport. This may include dual or multipurpose vehicles which otherwise comply with sections 56-1011 through 56-1023, Idaho Code, and specifications established by board rule.

(6) "Ambulance service" means an agency licensed by the EMS bureau operated with the intent to provide personnel and equipment for medical treatment at an emergency scene, during transportation or during transfer of persons experiencing physiological or psychological illness or injury who may need medical attention during transport.

(7) "Applicant" means any organization that is requesting an agency license under this chapter and includes the following:

(a) An organization seeking a new license;

(b) An existing agency that intends to change the level of licensed personnel it utilizes;

(c) An existing agency that intends to change its geographic coverage area, except by agency annexation;

(d) An existing nontransport service that intends to provide ambulance service;

(e) An existing ambulance service that intends to discontinue transport and become a nontransport service.

(8) "Board" means the Idaho board of health and welfare.

(9) "Commission" means the Idaho emergency medical services physician commission.

(10) "Department" means the Idaho department of health and welfare.

(11) "Emergency medical responder" means a person who has met the qualifications for licensure as set forth in sections 56-1011 through 56-1023, Idaho Code, is licensed by the EMS bureau under sections 56-1011 through 56-1023, Idaho Code, carries out the practice of emergency care within the scope of practice determined by the commission and practices under the supervision of an Idaho licensed physician.

(12) "Emergency medical services" or "EMS" means the system utilized in responding to a perceived individual need for immediate care in order to prevent loss of life or aggravation of physiological or psychological illness or injury.

(13) "EMS bureau" means the bureau of emergency medical services of the department.

(14) "Emergency medical technician" means a person who has met the qualifications for licensure as set forth in sections 56-1011 through 56-1023, Idaho Code, is licensed by the EMS bureau under sections 56-1011 through 56-1023, Idaho Code, carries out the practice of emergency care within the scope of practice determined by the commission and practices under the supervision of an Idaho licensed physician.

(15) "Licensed personnel" means those individuals who are emergency medical responders, emergency medical technicians, advanced emergency medical technicians and paramedics.

(16) "National emergency medical services information system technical assistance center" means an organization that validates software for com-

pliance with the EMS data set defined by the United States department of transportation national highway traffic safety administration.

(17) "Nontransport service" means an agency licensed by the EMS bureau, operated with the intent to provide personnel or equipment for medical stabilization at an emergency scene, but not intended to be the service that will actually transport sick or injured persons.

(18) "Nontransport vehicle" means any vehicle operated by an agency with the intent to provide personnel or equipment for medical stabilization at an emergency scene, but not intended as the vehicle that will actually transport sick or injured persons.

(19) "Paramedic" means a person who has met the qualifications for licensure as set forth in sections 56-1011 through 56-1023, Idaho Code, is licensed by the EMS bureau under sections 56-1011 through 56-1023, Idaho Code, carries out the practice of emergency care within the scope of practice determined by the commission and practices under the supervision of an Idaho licensed physician.

(20) "Supervision" means the medical direction by a licensed physician of activities provided by licensed personnel affiliated with a licensed ambulance, air medical or nontransport service, including, but not limited to: establishing standing orders and protocols, reviewing performance of licensed personnel, providing instructions for patient care via radio or telephone, and other oversight.

(21) "Transfer" means the transportation of a patient from one (1) medical care facility to another.

History.

I.C., § 39-141, as added by 1976, ch. 187, § 2, p. 674; am. 1980, ch. 145, § 7, p. 310; am. 1992, ch. 110, § 1, p. 339; am. 1993, ch. 50, § 1, p. 130; am. and redesign. 1996, ch. 26, § 3,

p. 61; am. 1999, ch. 131, § 1, p. 376; am. and redesign. 2001, ch. 110, § 5, p. 373; am. 2006, ch. 421, § 1, p. 1301; am. 2009, ch. 189, § 2, p. 611.

STATUTORY NOTES

Amendments.

The 2006 amendment, by ch. 421, deleted former subsection (3), which read: "Board of Medicine" means the Idaho board of medicine as provided in chapter 18, title 54, Idaho Code"; redesignated former (4) as present subsection (3); in present subsection (4)(d)(i), deleted "at least fifty (50) hours of" following "has completed" and "antishock trouser application" following "fluid therapy"; substituted "training under the supervision of" for "training by" in the introductory language of subsection (4)(d)(ii); substituted "defined by the commission" for "authorized by the board of medicine" in subsection (4)(d)(ii)(B); substi-

tuted "commission" for "board of medicine" in subsection (4)(e)(ii); and added present subsection (4).

The 2009 amendment, by ch. 189, rewrote the section to the extent that a detailed comparison is impracticable, adding subsections (1) to (4), (6), (7), (11), (13) to (16), and (19), and deleting the definition of "certified personnel."

Compiler's Notes.

This section was originally compiled as § 39-141. In 1996, this section was redesignated as § 39-140. In 2001, this section was again redesignated as § 56-1012.

JUDICIAL DECISIONS

Cited in: Intermountain Health Care, Inc. v. Board of County Comm'rs, 109 Idaho 299, 707 P.2d 410 (1985).

56-1013. Authorized actions. — Persons licensed by the EMS bureau shall be authorized to perform such acts under written or oral authorization of a licensed physician as shall be established by rules of the commission, including, but not limited to, administration of intravenous solutions and drugs, cardiac defibrillation, airway management, endotracheal intubation and other patient care.

History.

I.C., § 39-141, as added by 1996, ch. 26, § 4, p. 61; am. and redesign. 2001, ch. 110, § 6,

p. 373; am. 2006, ch. 421, § 2, p. 1301; am. 2009, ch. 189, § 3, p. 611.

STATUTORY NOTES

Amendments.

The 2006 amendment, by ch. 421, substituted "commission" for "board of medicine" and deleted "antishock trouser application" following "defibrillation."

The 2009 amendment, by ch. 189, substituted "Persons licensed by the EMS bureau" for "Persons certified by the department."

Compiler's Notes.

This section was originally compiled as § 39-141.

Former § 39-141 was amended and redesignated as § 39-140 by S.L. 1996, ch. 26, § 3, effective July 1, 1996 and then redesignated as § 50-1012 by S.L. 2001, ch. 110, § 5.

56-1013A. Idaho emergency medical services physician commission — Terms and operation. — (1) There is hereby created in the department an Idaho emergency medical services physician commission for the purpose of establishing standards for scope of practice and medical supervision for licensed personnel and agencies licensed by the EMS bureau, and for making disciplinary action recommendations to the EMS bureau against licensed personnel. Notwithstanding any other provision of law to the contrary, the commission shall exercise its powers and duties in accordance with the provisions of sections 56-1011 through 56-1023, Idaho Code, relative to scope of practice and medical supervision of licensed personnel.

(2) The commission shall be composed of eleven (11) voting members appointed by the governor upon assurance of equitable geographic and rural representation. Six (6) members shall be physicians currently licensed in Idaho and appointed as follows: one (1) member representing the Idaho board of medicine as provided in chapter 18, title 54, Idaho Code, one (1) member representing the Idaho medical association, one (1) member representing the EMS bureau, one (1) member representing the Idaho chapter of the American college of emergency physicians, one (1) member representing the Idaho chapter of the American academy of pediatrics and one (1) member representing the Idaho chapter of the American college of surgeons committee on trauma. Three (3) members shall be physicians currently licensed in Idaho and practicing as an EMS medical director representing the following associations: one (1) member representing the Idaho association of counties, one (1) member representing the Idaho fire chiefs association and one (1) member representing the Idaho hospital association. Two (2) members shall be Idaho citizens representing the public interest.

(3) Except as provided in this subsection, members of the commission shall be appointed for a term of three (3) years. The following four (4)

members shall be appointed to an initial term of two (2) years: the member representing the board of medicine, the member representing the Idaho chapter of the American college of emergency physicians, the member representing the Idaho chapter of the American college of surgeons committee on trauma and the member representing the Idaho fire chiefs association. The remaining seven (7) members shall be appointed for an initial term of three (3) years. Thereafter, all terms shall be for a period of three (3) years.

(4) The commission shall elect a chair and such officers as it may deem necessary and appropriate. The commission shall meet at least annually and at the call of the chair. Members of the commission shall be compensated as provided in section 59-509(b), Idaho Code.

(5) Prior to the expiration of the regular term of a member of the commission or upon the occurrence or declaration of a vacancy in the membership of the commission, the EMS bureau shall notify the represented entity of that fact in writing and the represented entity shall, within sixty (60) days thereafter, nominate at least three (3) persons to fill the vacancy in a manner as shall be determined by the rules and bylaws of the represented entity and shall forward the nominations to the governor, who shall appoint from among the nominees a person to be a member of the commission to fill the vacancy. Persons nominated for a seat held by a physician must be licensed by the state of Idaho to practice medicine.

(6) Moneys collected pursuant to rules promulgated by the board for initial applications and renewal of EMS personnel licenses are hereby continuously appropriated and shall be utilized exclusively for the purposes set forth in this section as determined by the commission.

(7) The commission shall prepare a budget on an annual basis indicating that portion of the funds necessary for the continuous operation of the commission to achieve the purposes of this section.

History.

I.C., § 56-1013A, as added by 2006, ch. 421,

§ 3, p. 1301; am. 2007, ch. 306, § 1, p. 856; am. 2009, ch. 189, § 4, p. 611.

STATUTORY NOTES

Cross References.

State board of medicine, § 54-1805.

Amendments.

The 2007 amendment, by ch. 306, added "and for making disciplinary action recommendations to the department against certified personnel" in the first sentence in subsection (1).

The 2009 amendment, by ch. 189, in subsection (1), in the first sentence, substituted "licensed personnel and agencies licensed by the EMS bureau" for "certified personnel, ambulance services, and nontransport agencies licensed by the department" and substituted "recommendations to the EMS bureau against licensed personnel" for "recommendations to the department against certified personnel" and, in the last sentence, updated the

last section reference and substituted "licensed personnel" for "certified personnel"; in the second sentence in subsection (2), substituted "the EMS bureau" for "the emergency medical services (EMS) bureau of the department"; in subsection (5), substituted "EMS bureau" for "department"; and, in subsection (6), substituted "promulgated by the board for initial applications and renewal of EMS personnel licenses" for "promulgated by the department for initial and renewal EMS certifications."

Compiler's Notes.

For more on the Idaho medical association, see <http://www.idmm.org>.

For more on Idaho chapter of the American college of emergency physicians, see <http://www.acep.org/content.aspx?id=22772>.

For more on the Idaho chapter of the American academy of pediatrics, see <http://www.idahoap.org>.

For more on the committee on trauma of the American college of surgeons, see <http://www.facs.org/trauma/index.html>.

For more on Idaho association of countries, see <http://www.idcountries.org>.

For more on the Idaho fire chiefs association, see <http://idahofirechiefs.org>.

For more on the Idaho hospital association, see <http://www.teamiha.org>.

Effective Dates.

Section 3 of S.L. 2007, ch. 306 declared an emergency. Approved March 30, 2007.

56-1014. Liability. — (1) No act or omission of any person who is duly licensed under sections 56-1011 through 56-1023, Idaho Code, by the EMS bureau done or omitted in good faith while rendering emergency medical services to a person or persons who are perceived to need immediate care in order to prevent loss of life or aggravation of physiological or psychological illness or injury shall impose any liability upon those personnel, the supervising physician, the hospital, the organization providing the service, or upon a federal, state, county, city or other local governmental unit, or upon employees of such governmental unit, unless such provider of care or such personnel be shown to have caused injury and damages to such person or persons as a proximate result of his, her or their reckless or grossly negligent misconduct, which shall be the sole grounds for civil liability of such persons in the provision of care or assistance under sections 56-1011 through 56-1023, Idaho Code, regardless of the circumstance under which such care or assistance may be provided. This section shall not relieve the organization or agency operating the service from the duty of securing, maintaining and operating, the equipment and licensure designated for use in performing the emergency medical services.

(2) The provisions of subsection (1) of this section shall apply to licensed personnel of another state of the United States who enter this state in response to an emergency to render emergency medical services to a person who is perceived to need immediate care in order to prevent loss of life or aggravation of physiological or psychological illness or injury.

History.

I.C., § 39-142, as added by 1976, ch. 187, § 3, p. 674; am. 1996, ch. 26, § 5, p. 61; am.

and redesisg. 2001, ch. 110, § 7, p. 373; am. 2009, ch. 189, § 5, p. 611; am. 2010, ch. 138, § 3, p. 292.

STATUTORY NOTES

Amendments.

The 2009 amendment, by ch. 189, in the first sentence, substituted "duly licensed" for "duly certified" and "EMS bureau" for "department of health and welfare" and twice substituted "56-1023" for "56-1018B"; and, in the last sentence, inserted "and licensure."

The 2010 amendment, by ch. 138, added the subsection (1) designation and subsection (2).

Compiler's Notes.

This section was formerly compiled as § 39-142.

Effective Dates.

Section 4 of S.L. 2010, ch. 138 declared an emergency. Approved March 29, 2010.

56-1015. Failure to obtain consent. — No person licensed under sections 56-1011 through 56-1023, Idaho Code, or physician or hospital licensed in this state shall be subject to civil liability, based solely upon failure to obtain consent in rendering emergency medical, surgical, hospital

or health services to any individual regardless of age where that individual is unable to give this consent for any reason and there is no other person reasonably available who is legally authorized to consent to the providing of such care, provided, however, that such person, physician, or hospital has acted in good faith and without knowledge of facts negating consent. The provision or refusal of consent under sections 56-1011 through 56-1023, Idaho Code, shall be governed by chapter 45, title 39, Idaho Code.

History.

I.C., § 39-143, as added by 1976, ch. 187, § 4, p. 674; am. 1996, ch. 26, § 6, p. 61; am.

and redesign. 2001, ch. 110, § 8, p. 373; am. 2005, ch. 120, § 7, p. 380; am. 2009, ch. 189, § 6, p. 611.

STATUTORY NOTES**Amendments.**

The 2009 amendment, by ch. 189, substituted "No person licensed" for "No person certified" and twice substituted "56-1023" for "56-1018B."

Compiler's Notes.

This section was formerly compiled as § 39-143.

56-1016. Agency minimum standards. — Each ambulance service, air medical service and nontransport service shall be licensed by the EMS bureau based on the level of licensed personnel it utilizes, transport capability and self-declared geographic coverage area and shall meet the following standards:

(1) Personnel during transport or transfer — There shall be at least two (2) crew members on each patient transport or transfer, with the crew member delivering patient care being, at a minimum, a licensed emergency medical technician (EMT).

(2) Dispatch — Each licensed EMS agency shall have a twenty-four (24) hour dispatch arrangement and shall respond to calls on a twenty-four (24) hour basis.

(3) Agency inspections and licensing — The EMS bureau shall conduct inspections at least annually related to agency licensing or shall contract to have the inspections carried out. Each agency shall have a current state license in order to operate.

(4) Ambulance service minimum standards waiver — The controlling authority providing ambulance services may petition the board for waiver of the ambulance standards of section 56-1016(2), Idaho Code, if compliance with these standards would cause undue hardship on the community being served, or would result in abandonment of ambulance services.

(5) Nontransport service minimum standards waiver — The controlling authority providing nontransport services may petition the EMS bureau for waiver of the twenty-four (24) hour response requirement of this section if the petition demonstrates that the community, setting, industrial site or event is not populated on a twenty-four (24) hour basis or does not exist on a three hundred sixty-five (365) day per year basis or if compliance with these standards would cause undue hardship on the community being served, or would result in abandonment of nontransport services.

(6) Supervision — A licensed physician shall supervise the medical activities provided by licensed personnel affiliated with the licensed agency

including, but not limited to: establishing standing orders and protocols, reviewing performance of licensed personnel, approving methods for licensed personnel to receive instructions for patient care via radio, telephone or in person, and other oversight as provided in the rules of the commission.

(7) Applicants must submit the following information with their applications and agree to meet the following requirements as a condition of licensure:

- (a) A declaration of anticipated applicant agency costs and revenues; a statement of projected changes in response time; and a narrative describing projected clinical benefits to patients resulting from licensure using methods defined in board rules concerning such matters on an application provided by the EMS bureau; and
- (b) Collect and report data to the EMS bureau upon receiving a license using a data collection system that is validated as compliant by the national emergency medical services information system technical assistance center in accordance with board rules.

(8) The EMS bureau will provide notice of any such application to all cities, counties and other units of local government that have any geographic coverage area in common with the applicant in accordance with board rules. Such notice will include a summary of the applicant data supplied to the EMS bureau. Any other EMS bureau use of the cost and revenue data supplied by applicants is limited exclusively to informational purposes.

(9) Appeal of a denial of an applicant’s license will be governed by IDAPA 16.05.03, rules governing contested case proceedings and declaratory rulings.

History.

I.C., § 39-144, as added by 1976, ch. 187, § 5, p. 674; am. 1993, ch. 50, § 2, p. 130; am. 1996, ch. 26, § 7, p. 61; am. and redesign. 2001, ch. 110, § 9, p. 373; am. 2006, ch. 421, § 4, p. 1301; am. 2009, ch. 189, § 7, p. 611.

STATUTORY NOTES

Amendments.

The 2006 amendment, by ch. 421, rewrote subsection (7), which formerly read: “All ambulances in service on the effective date of sections 56-1011 through 56-1018B, Idaho Code, are accorded ‘grandfather rights,’ and are therefore exempt from the ambulance vehicle specifications established by the board of health and welfare, whether or not such ambulances continue under the control of the same authority.”

The 2009 amendment, by ch. 189, rewrote

the section to the extent that a detailed comparison is impracticable, adding present subsections (5) and (7) to (9).

Compiler’s Notes.

This section was formerly compiled as § 39-144.

For more on the national emergency medical services information system technical assistance center, see <http://www.nemsis.org>.

The abbreviation enclosed in parentheses so appeared in the law as enacted.

56-1017. [Amended and Redesignated.]

STATUTORY NOTES

Compiler’s Notes.

Former § 56-1017 was amended and redesignated as § 56-1023 by S.L. 2009, ch. 189, § 9.

56-1018. Emergency medical services fund. — There is hereby created in the dedicated fund of the state treasury a fund known as the “Emergency Medical Services Fund.” Subject to appropriation by the legislature, moneys in the fund shall be used exclusively for the purposes of emergency medical services training, communications, vehicle and equipment grants, and other programs furthering the goals of highway safety and emergency response providing medical services at motor vehicle accidents.

History. § 2, p. 411; am. and redesign. 2001, ch. 110,
I.C., § 39-146, as added by 1981, ch. 221, § 11, p. 373.

STATUTORY NOTES

Cross References.

Emergency medical services fee, § 49-452.

Former § 39-146, which comprised S.L. 1976, ch. 339, § 3, p. 1128 was a rider to an appropriation measure for the department of health and welfare and, as such, expired June 30, 1977.

Compiler's Notes.

This section was formerly compiled as § 39-146.

56-1018A. Emergency medical services fund II. — There is hereby created in the dedicated fund of the state treasury a fund known as the emergency medical services fund II. Subject to appropriation by the legislature, moneys in the fund shall be used exclusively for the purposes of emergency medical services.

History. § 2, p. 264; am. and redesign. 2001, ch. 110,
I.C., § 39-146A, as added by 1987, ch. 133, § 12, p. 373.

STATUTORY NOTES

Compiler's Notes.

This section was formerly compiled as § 39-146A.

56-1018B. Emergency medical services fund III. — (1) There is hereby created in the dedicated fund of the state treasury a fund known as the emergency medical services fund III. Subject to appropriation by the legislature, moneys in the fund shall be used exclusively for the purpose of acquiring vehicles and equipment for use by emergency medical services personnel in the performance of their duties which include highway safety and emergency response to motor vehicle accidents.

(2) The bureau of emergency medical services of the department of health and welfare shall be responsible for distributing moneys from the fund to qualifying nonprofit and governmental entities that submit an application for a grant from the fund. The bureau shall approve grants based on the following criteria:

- (a) The requesting entity is a nonprofit or governmental entity which holds a current license as an ambulance or nontransport service issued by the state of Idaho;
- (b) The requesting entity has demonstrated need based on criteria established by the bureau;

- (c) The requesting entity has provided verification that it has received the approval and endorsement of a city or county within its service area;
 - (d) The requesting entity has certified that the title to any vehicle purchased with funds from the fund shall be in the name of the city or county which endorsed the application and shall submit proof of titling as soon as practicable;
 - (e) The state of Idaho shall retain a security interest in the vehicle to secure the performance of the grant recipient to utilize the vehicle consistent with the intent described in the application.
- (3) Notwithstanding the requirements of subsections (2)(c) and (2)(d) of this section, the bureau of emergency medical services is authorized to approve and issue a grant to an applicant in the absence of an endorsement if the endorsement is withheld without adequate justification.

History. § 1, p. 951; am. and redesisg. 2001, ch. 110,
I.C., § 39-146B, as added by 1999, ch. 360, § 13, p. 373.

STATUTORY NOTES

Compiler's Notes.
This section was formerly compiled as § 39-146B.

56-1019. Services to victims of cystic fibrosis. — The department of health and welfare shall establish, through the crippled children's program, a program of services to persons suffering from cystic fibrosis who are twenty-one (21) years or more of age. The department shall establish uniform standards of financial eligibility for services provided under this section.

History. § 2, p. 863; am. 1986, ch. 38, § 1, p. 121; am.
I.C., § 39-147, as added by 1978, ch. 334, and redesisg. 2001, ch. 110, § 14, p. 373.

STATUTORY NOTES

Legislative Intent.
Section 1 of S.L. 1978, ch. 334 read: "The legislature finds that the population of persons who are victims of the disease of cystic fibrosis now includes a number of persons who are over the age of twenty-one (21) years. These individuals are usually excluded from private medical insurance and are subject to unusual medical costs. A victim of cystic fibrosis is capable of continuing to work and lead a productive life if proper medical care is provided. At this time, the crippled children's program of the department of health and welfare provides service to victims of cystic fibrosis who are under the age of twenty-one (21) but the legislature finds that there exists a need for a continuum of service to include such individuals over the age of twenty-one (21)."

Compiler's Notes.
This section was formerly compiled as § 39-147.

56-1020. Penalties for personnel license violations. — Any person who practices or attempts to practice EMS as a licensed provider of emergency care as provided for in sections 56-1011 through 56-1023, Idaho Code, without having at the time of so doing a valid, unexpired, unrestricted, unrevoked and unsuspended license issued by the EMS bureau under sections 56-1011 through 56-1023, Idaho Code, shall be guilty of a

misdemeanor and shall be subject to a fine of not more than five hundred dollars (\$500) or imprisonment for not more than six (6) months, or both, for each violation. In the event that the prosecuting attorney in the county where the alleged violation occurred fails or refuses to act within sixty (60) days of notification of the alleged violation, the attorney general is authorized to prosecute the alleged violation.

History.

I.C., § 56-1020, as added by 2009, ch. 189,
§ 8, p. 611.

STATUTORY NOTES**Cross References.**

Attorney general, § 67-1401 et seq.

§ 39-150, as added by 1994, ch. 298, § 1, p. 941; am. and redesign. 2001, ch. 110, § 15, p. 373; am. 2004, ch. 56, § 4, p. 258, was repealed by S.L. 2007, ch. 196, § 18. See § 39-4501 et seq.

Prior Laws.

Former § 56-1020, which comprised I.C.,

56-1021. Penalties for agency license violations. — Any person establishing, conducting, managing or operating any agency as provided for in sections 56-1011 through 56-1023, Idaho Code, without a license issued by the EMS bureau under sections 56-1011 through 56-1023, Idaho Code, shall be guilty of a misdemeanor and shall be subject to a fine of not more than one thousand dollars (\$1,000) or imprisonment for not more than six (6) months, or both. Each day of continuing violation shall constitute a separate offense. In the event that the prosecuting attorney in the county where the alleged violation occurred fails or refuses to act within sixty (60) days of notification of the alleged violation, the attorney general is authorized to prosecute the alleged violation.

History.

I.C., § 56-1021, as added by 2009, ch. 189,
§ 8, p. 611.

STATUTORY NOTES**Cross References.**

Attorney general, § 67-1401 et seq.

§ 39-151, as added by 1994, ch. 298, § 1, p. 941; am. and redesign. 2001, ch. 110, § 16, p. 373; am. 2004, ch. 56, § 5, p. 258; am. 2004, ch. 228, § 1, p. 671, was repealed by S.L. 2007, ch. 196, § 18. See § 39-4501 et seq.

Prior Laws.

Former § 56-1021, which comprised I.C.,

56-1022. Personnel and agencies licensure actions — Grounds — Procedure. — (1) Subject to the provisions of chapter 52, title 67, Idaho Code, the EMS bureau, upon recommendation of the commission, may deny a license or refuse to renew a license for a person, or may suspend or revoke a license or may impose probationary conditions if the holder of a license or the applicant for a license has engaged in unprofessional conduct which has endangered or is likely to endanger the health, welfare or safety of the public. Such unprofessional conduct includes, but is not limited to:

(a) Obtaining a license by means of fraud, misrepresentation or concealment of a material fact;

- (b) Being found guilty of unprofessional conduct as defined by rule established by the board;
- (c) Being convicted of a crime which would have a direct and adverse bearing on the licensee's ability to practice or perform emergency medical care competently;
- (d) The unauthorized practice of medicine;
- (e) Violating any provisions of sections 56-1011 through 56-1023, Idaho Code, or any of the rules established by the board or the commission thereunder; or
- (f) Being found mentally incompetent by a court of competent jurisdiction.

(2) Subject to the provisions of chapter 52, title 67, Idaho Code, the EMS bureau may deny, revoke or refuse to renew a license of an agency, or may impose probationary conditions or fines as a condition of an agency's ability to retain a license in accordance with board rule.

(3) A denial, refusal to renew, suspension, revocation or imposition of probationary conditions upon a license may be ordered by the EMS bureau after opportunity for a hearing in a manner provided by rule established by the board. An application for reinstatement may be filed with the EMS bureau one (1) year from the date of license revocation. In the event a timely application is filed, the EMS bureau shall:

- (a) Hold a hearing to consider such reinstatement; and
- (b) Accept or reject the application for reinstatement.

History.

I.C., § 56-1022, as added by 2009, ch. 189,
§ 8, p. 611.

STATUTORY NOTES

Prior Laws.

Former § 56-1022, which comprised I.C.,
§ 39-152, as added by 1994, ch. 298, § 1, p.
941; am. and redesign. 2001, ch. 110, § 17, p.

373.; am. 2004, ch. 228, § 1, p. 671, was
repealed by S.L. 2007, ch. 196, § 18. See
§ 39-4501 et seq.

56-1023. Rules. — (1) The commission is authorized and directed to adopt appropriate rules defining the allowable scope of practice and acts and duties which can be performed by persons licensed by the EMS bureau and the required level of supervision by a licensed physician.

(2) The board is authorized and directed to adopt appropriate rules and standards concerning the administration of sections 56-1011 through 56-1022 and this section, Idaho Code, including criteria for educational programs, certification and licensure of personnel, certification of EMS instructors, licensure of ambulance, air medical and nontransport services, manufacturing standards for ambulances and nontransport vehicles, criteria for the use of air medical services by licensed EMS personnel at emergency scenes, establishment of fees for training, inspections and licensure, appropriate requirements for renewal of licensure of personnel and agencies and the management of complaints, investigations and license

actions against licensed EMS personnel and agencies. The rules of the board must be consistent with the rules adopted by the commission.

(3) Additionally, the department shall develop guidelines, standards and procedures for reducing exposure to pathogens from human blood, tissue or fluids. Such guidelines, standards and procedures shall be made available to all law enforcement personnel, all emergency medical services personnel and agencies, and such other emergency personnel who request such information.

History.

I.C., § 39-145, as added by 1976, ch. 187, § 6, p. 674; am. 1988, ch. 16, § 1, p. 19; am. 1996, ch. 26, § 8, p. 61; am. and redsig. 2001,

ch. 110, § 10, p. 373; am. 2004, ch. 362, § 1, p. 1082; am. 2006, ch. 421, § 5, p. 1301; am. 2007, ch. 306, § 2, p. 856; am. and redsig. 2009, ch. 189, § 9, p. 611.

STATUTORY NOTES

Prior Laws.

Former § 56-1023, which comprised I.C., § 39-153, as added by 1994, ch. 298, § 1, p. 941; am. and redsig. 2001, ch. 110, § 18, p. 373, was repealed by S.L. 2007, ch. 196, § 18. See § 39-4501 et seq.

Amendments.

The 2006 amendment, by ch. 421, substituted "commission" for "board of medicine" near the beginning of subsection (1) and near the end of subsection (2).

The 2007 amendment, by ch. 306, added "and the management of complaints, investigations and certification and license actions against certified EMS personnel and licensed

EMS services" in the first sentence in subsection (2).

The 2009 amendment, by ch. 189, redesignated this section from § 56-1017 and rewrote the section, revising board rulemaking authority and EMS bureau guideline responsibility.

Compiler's Notes.

This section was originally compiled as § 39-145. In 2001, this section was redesignated as § 56-1017. In 2009, this section was redesignated as § 56-1023.

Effective Dates.

Section 3 of S.L. 2007, ch. 306 declared an emergency. Approved March 30, 2007.

56-1024. Revocation. [Repealed.]

STATUTORY NOTES

Compiler's Notes.

This section, which comprised I.C., § 39-154, as added by 1994, ch. 298, § 1, p. 941; am. and redsig. 2001, ch. 110, § 19, p. 373,

was repealed by S.L. 2007, ch. 196, § 18. For present comparable provisions, see § 39-4501 et seq.

56-1025. Conflicting DNR orders. [Repealed.]

STATUTORY NOTES

Compiler's Notes.

This section, which comprised I.C., § 39-155, as added by 1994, ch. 298, § 1, p. 941; am. and redsig. 2001, ch. 110, § 20, p. 373,

was repealed by S.L. 2007, ch. 196, § 18. For present comparable provisions, see § 39-4501 et seq.

56-1026. Adherence to DNR protocol. [Repealed.]

STATUTORY NOTES

Compiler's Notes.

This section, which comprised I.C., § 39-156, as added by 1994, ch. 298, § 1, p. 941; am. and redesign. 2001, ch. 110, § 21, p. 373;

am. 2004, ch. 56, § 6, p. 258; am. 2004, ch. 228, § 2, p. 671, was repealed by S.L. 2007, ch. 196, § 18. For present comparable provisions, see § 39-4501 et seq.

56-1027. Disregarding of DNR order. [Repealed.]

STATUTORY NOTES

Compiler's Notes.

This section, which comprised I.C., § 39-157, as added by 1994, ch. 298, § 1, p. 941; am. and redesign. 2001, ch. 110, § 22, p. 373;

am. 2004, ch. 56, § 7, p. 258, was repealed by S.L. 2007, ch. 196, § 18. For present comparable provisions, see § 39-4501 et seq.

56-1028. Absence of DNR order. [Repealed.]

STATUTORY NOTES

Compiler's Notes.

This section, which comprised I.C., § 39-158, as added by 1994, ch. 298, § 1, p. 941; am. and redesign. 2001, ch. 110, § 23, p. 373,

was repealed by S.L. 2007, ch. 196, § 18. For present comparable provisions, see § 39-4501 et seq.

56-1029. Immunity. [Repealed.]

STATUTORY NOTES

Compiler's Notes.

This section, which comprised I.C., § 56-1029, as added by 2001, ch. 110, § 24, p. 373;

am. 2004, ch. 56, § 8, p. 258, was repealed by S.L. 2007, ch. 196, § 18. For present comparable provisions, see § 39-4501 et seq.

56-1030. Penalties. [Repealed.]

STATUTORY NOTES

Compiler's Notes.

This section, which comprised I.C., § 39-160, as added by 1994, ch. 298, § 1, p. 941; am. and redesign. 2001, ch. 110, § 25, p. 373,

was repealed by S.L. 2007, ch. 196, § 18. For present comparable provisions, see § 39-4501 et seq.

56-1031. Effect on insurance — Patient's decision. [Repealed.]

STATUTORY NOTES

Compiler's Notes.

This section, which comprised I.C., § 56-1031, as added by 2001, ch. 110, § 26, p. 373,

was repealed by S.L. 2007, ch. 196, § 18. For present comparable provisions, see § 39-4501 et seq.

56-1032. Preservation of existing rights. [Repealed.]**STATUTORY NOTES****Compiler's Notes.**

This section, which comprised I.C., § 39-162, as added by 1994, ch. 298, § 1, p. 941; am. and redesign. 2001, ch. 110, § 27, p. 373,

was repealed by S.L. 2007, ch. 196, § 18. For present comparable provisions, see § 39-4501 et seq.

56-1033. Prior and out-of-state DNR orders and identification — Validity. [Repealed.]**STATUTORY NOTES****Compiler's Notes.**

This section, which comprised I.C., § 39-163, as added by 1994, ch. 298, § 1, p. 941; am. and redesign. 2001, ch. 110, § 28, p. 373,

was repealed by S.L. 2007, ch. 196, § 18. For present comparable provisions, see § 39-4501 et seq.

56-1034. Application to mass casualties. [Repealed.]**STATUTORY NOTES****Compiler's Notes.**

This section, which comprised I.C., § 39-164, as added by 1994, ch. 298, § 1, p. 941; am. and redesign. 2001, ch. 110, § 29, p. 373,

was repealed by S.L. 2007, ch. 196, § 18. For present comparable provisions, see § 39-4501 et seq.

56-1035. Rulemaking authority. [Repealed.]**STATUTORY NOTES****Compiler's Notes.**

This section, which comprised I.C., § 39-165, as added by 1994, ch. 298, § 1, p. 941; am. and redesign. 2001, ch. 110, § 30, p. 373;

am. 2004, ch. 228, § 3, p. 671, was repealed by S.L. 2007, ch. 196, § 18. For present comparable provisions, see § 39-4501 et seq.

56-1036. Legislative intent. — (1) The legislature finds that accidental poisoning is a serious public health problem in the state of Idaho and is a problem that disproportionately affects Idaho's children. It further finds that a significant reduction in the morbidity and mortality resulting from such accidental poisonings has occurred as a result of the services provided by the poison control center.

(2) The purpose of sections 56-1036 through 56-1040, Idaho Code, is to declare legislative support for the important work of the poison control center and to assure, by statute, the continued existence of the poison control center.

(3) The legislature finds that the poison control center has saved lives and reduced suffering associated with poisoning by providing emergency telephone assistance and treatment referral to victims of such incidents, by providing immediate treatment information to health care professionals, and by providing public education and prevention programs.

(4) The legislature recognizes that enhanced cooperation between the

emergency medical system and poison control centers will aid in responding to emergencies resulting from exposure to poisons and that, by providing telephone assistance to individuals with possible exposure to poisons, the need for emergency room and professional office visits will be reduced. As a result, the cost of health care to those who may have been poisoned will be avoided or reduced and appropriate treatment will be assured.

History. § 1, p. 483; am. and redesign. 2001, ch. 110,
I.C., § 39-166, as added by 1996, ch. 147, § 31, p. 373.

STATUTORY NOTES

Compiler's Notes.

This section was formerly compiled as § 39-166.

S.L. 1996, ch. 147, § 1, and ch. 204, § 1, both effective July 1, 1996, purported to enact a new section of chapter 16, title 39, Idaho Code, designated as § 39-166. Since § 39-166

as enacted by ch. 147, § 1 was approved first, it was compiled as § 39-166 (now § 56-1036) and § 39-166 as enacted by ch. 204, § 1, was compiled as § 39-171 through the use of brackets. That redesignation was made permanent by S.L. 2001, ch. 103.

56-1037. Poison control center established — Services offered. —

The director of the department of health and welfare (for purposes of sections 56-1036 through 56-1040, Idaho Code, "director") shall establish, and provide support in a manner consistent with sections 56-1036 through 56-1040, Idaho Code, a statewide poison control center. The poison control center shall offer the following services:

(1) Provide twenty-four (24) hour emergency telephone management and treatment referral of victims of poisoning to include determining whether treatment can be accomplished at the scene of the incident or transport to an emergency treatment or other facility is required, and carrying out telephone follow-up to families and other individuals to assure that adequate care is provided;

(2) Provide information to health professionals involved in management of poisoning and overdose victims; and

(3) Provide coordination and development of community education programs designed to inform the public and members of the health professions of poison prevention and treatment methods and to improve awareness of poisoning problems, occupational risks and environmental exposures.

History. § 1, p. 483; am. and redesign. 2001, ch. 110,
I.C., § 39-167, as added by 1996, ch. 147, § 32, p. 373.

STATUTORY NOTES

Compiler's Notes.

This section was formerly compiled as § 39-167.

S.L. 1996, ch. 147, § 1, and ch. 204, § 2, both effective July 1, 1996, purported to enact a new section of chapter 16, title 39, Idaho Code, designated as § 39-167. Since § 39-167

as enacted by ch. 147, § 1 was approved first, it was compiled as § 39-167 (now § 56-1037) and § 39-167 as enacted by ch. 204, § 2, was compiled as § 39-172 through the use of brackets. That redesignation was made permanent by S.L. 2001, ch. 103.

56-1038. Coordination with other agencies. — The director shall

establish a system for consulting with other state agency programs concerned with poisons and poisonings, incidents involving exposures to potentially poisonous substances, and other toxicological matters to develop the most coordinated and consistent response to such situations as is reasonably possible.

History.

I.C., § 39-168, as added by 1996, ch. 147, § 1, p. 483; am. and redesign. 2001, ch. 110, § 33, p. 373.

STATUTORY NOTES**Compiler's Notes.**

This section was formerly compiled as § 39-168.

S.L. 1996, ch. 147, § 1, and ch. 204, § 3, both effective July 1, 1996, purported to enact a new section of chapter 16, title 39, Idaho Code, designated as § 39-168. Since § 39-168

as enacted by ch. 147, § 1 was approved first, it was compiled as § 39-168 (now § 56-1038) and § 39-168 as enacted by ch. 204, § 3, was compiled as § 39-173 through the use of brackets. That redesignation was made permanent by S.L. 2001, ch. 103.

56-1039. Power to accept federal funds and gifts. — The director may accept federal funds granted by congress or executive order, as well as gifts, grants, endowments and/or donations from individuals and private organizations or foundations for all or any of the purposes of the poison control center.

History.

I.C., § 39-169, as added by 1996, ch. 147, § 1, p. 483; am. and redesign. 2001, ch. 110, § 34, p. 373.

STATUTORY NOTES**Compiler's Notes.**

This section was formerly compiled as § 39-169.

S.L. 1996, ch. 147, § 1, and ch. 204, § 4, both effective July 1, 1996, purported to enact a new section of chapter 16, title 39, Idaho Code, designated as § 39-169. Since § 39-169

as enacted by ch. 147, § 1 was approved first, it was compiled as § 39-169 (now § 56-1039) and § 39-169 as enacted by ch. 204, § 3, was compiled as § 39-174 through the use of brackets. That redesignation was made permanent by S.L. 2001, ch. 103.

56-1040. Rulemaking authority. — The director shall adopt rules necessary to administer sections 56-1036 through 56-1040, Idaho Code, pursuant to chapter 52, title 67, Idaho Code.

History.

I.C., § 39-170, as added by 1996, ch. 147, § 1, p. 483; am. and redesign. 2001, ch. 110, § 35, p. 373.

STATUTORY NOTES**Compiler's Notes.**

This section was formerly compiled as § 39-170.

56-1041. State x-ray control agency. — (1) The state department of health and welfare is designated as the state agency having the responsibility for administration of the regulatory, licensing and radiation control

provisions associated with x-ray producing machines, as defined in section 56-1042, Idaho Code.

(2) The director of the department of health and welfare shall be administrator of the agency, hereinafter referred to as the director, who shall perform the functions vested in the agency pursuant to the provisions of sections 56-1041 through 56-1053, Idaho Code.

(3) In accordance with the laws of the state, the director may appoint, fix the compensation, and prescribe the powers and duties of such individuals, including consultants, advisory councils, emergency teams and committees as may be necessary to carry out the provisions of sections 56-1041 through 56-1053, Idaho Code. The personnel engaged in field activities of evaluation and inspection shall at least have a baccalaureate degree in the physical and/or life sciences, or the equivalent, and be trained in health physics.

(4) The agency shall for the protection of the occupational and public health and safety:

(a) Develop programs for evaluation of hazards associated with use of radiation;

(b) Formulate and recommend that the board of health and welfare adopt, promulgate and repeal codes, rules and standards relating to control of x-ray producing machines;

(c) Advise, consult, and cooperate with other agencies of the state, and federal government, other states and interstate agencies, political subdivisions, and with groups concerned with control of x-ray producing machines;

(d) Encourage, participate in, or conduct studies, investigations, training, research and demonstrations relating to x-ray producing machines;

(e) Collect and disseminate information relating to control of x-ray producing machines, including:

(i) Maintenance of a file of all license applications, issuances, denials, amendments, transfers, renewals, modifications, suspensions and revocations; and

(ii) Maintenance of a file of registrants possessing x-ray producing machines requiring registration under the provisions of sections 56-1041 through 56-1053, Idaho Code, and any administrative or judicial action pertaining thereto;

(f) Have the authority to accept and administer loans, grants, or other funds or gifts, conditional or otherwise, in furtherance of its functions from the federal government and from other sources, public or private;

(g) Issue subpoenas in order to compel the attendance of necessary witnesses and/or the production of records and documents.

History.

I.C., § 56-1041, as added by 2001, ch. 110,
§ 37, p. 373.

STATUTORY NOTES

Cross References.

Board of health and welfare, § 56-1005.

56-1042. Definitions.— As used in sections 56-1041 through 56-1053, Idaho Code:

- (1) "Board" means the Idaho board of health and welfare.
- (2) "Department" means the Idaho department of health and welfare.
- (3) "Electronic product" means any manufactured product or device or component part of such a product or device that has an electronic circuit which during operation can generate or emit a physical field of radiation.
- (4) "Person" means any individual, corporation, partnership, firm, association, trust, estate, public or private institution, group, agency, political subdivision of this state, any other state or political subdivision or agency thereof, and any legal successor, representative, agent or agency of the foregoing.
- (5) "Registration" means registration by any person possessing an x-ray producing machine in accordance with rules and standards adopted by the state board of health and welfare.
- (6) "X-ray producing machine" means any type of device which is capable of producing or emitting x-rays.

History.

I.C., § 56-1042, as added by 2001, ch. 110,
§ 38, p. 373.

56-1043. Rules — Licensing requirements and procedure — Registration of x-ray producing machines — Exemptions from registration or licensing. — (1) The board of health and welfare shall provide, by rule, for general or specific licensing of x-ray producing machines. Such rule shall provide for amendment, suspension or revocation of licenses. Such rule shall provide that:

- (a) Each application for a specific license shall be in writing and shall state such information as the board, by rule, may determine to be necessary to decide the technical, insurance and financial qualifications, or any other qualification of the applicant as the department may deem reasonable and necessary to protect the occupational and public health and safety. The department may at any time after the filing of the application, and before the expiration of the license, require further written statements and shall make such inspections as the department deems necessary in order to determine whether the license should be granted or denied or whether the license should be modified, suspended or revoked. In no event shall the department grant a specific license to any applicant who has never possessed a specific license issued by a recognized state or federal authority until the department has conducted an inspection or review which insures that the applicant can meet the rules and standards adopted pursuant to sections 56-1041 through 56-1053, Idaho Code. All applications and statements shall be signed by the applicant or licensee. The department may require any applications or statements to be made under oath or affirmation;
- (b) Each license shall be in such form and contain such terms and conditions as the board may by rule prescribe;
- (c) No license issued under the authority of sections 56-1041 through

56-1053, Idaho Code, and no right to process or utilize x-ray producing machines granted by any license shall be assigned or in any manner disposed of; and

(d) The terms and conditions of all licenses shall be subject to amendment, revision or modification by rules or orders issued in accordance with the provisions of sections 56-1041 through 56-1053, Idaho Code.

(2) The board of health and welfare may require licensing of those persons installing or repairing x-ray producing machines which the board has determined to present a potential hazard to the occupational and public health and safety. Such licensing requirements shall provide that:

(a) Each application for a license shall be in writing and shall state such information as the board, by rule, may determine to be necessary to decide the technical, insurance and financial qualifications, or any other qualification of the applicant as the department may deem reasonable and necessary. The department may at any time after the filing of the application, and before the expiration of the license, require further written statements and shall make such inspections as the department deems necessary in order to determine whether the license should be granted or denied or whether the license should be modified, suspended or revoked. All applications and statements shall be signed by the applicant or licensee. The department may require any applications or statements to be made under oath or affirmation;

(b) Each license shall be in such form and contain such terms and conditions as the board of health and welfare may by rule prescribe;

(c) No license issued under the authority of sections 56-1041 through 56-1053, Idaho Code, and no right to possess or utilize x-ray producing machines granted by any license shall be assigned or in any manner disposed of; and

(d) The terms and conditions of all licenses shall be subject to amendment, revision or modification by rules or orders issued in accordance with the provisions of sections 56-1041 through 56-1053, Idaho Code.

(3) The board of health and welfare may require registration of all x-ray producing machines which the department has determined to present a potential hazard to the occupational and public health and safety.

(4) The board of health and welfare may exempt certain x-ray producing machines or kinds of uses or users from the registration or licensing requirements set forth in this section when the department makes a finding that the exemption of such x-ray producing machines or kinds of uses or users will not constitute a significant risk to the health and safety of the public.

(5) In promulgating rules pursuant to sections 56-1041 through 56-1053, Idaho Code, the board of health and welfare shall, insofar as practical, strive to avoid requiring dual licensing, and shall provide for such recognition of other state or federal licenses as the department shall deem desirable, subject to such registration requirements as the board of health and welfare may prescribe.

History.

I.C., § 56-1043, as added by 2001, ch. 110,
§ 39, p. 373.

56-1044. Radiation machines used to perform mammography. —

(1) No person shall use a radiation machine to perform mammography unless the radiation machine is registered with the department of health and welfare under department rules for registration of radiation machines and is specifically authorized under this section for use for mammography.

(2) The department shall authorize a radiation machine for use for mammography if the radiation machine meets the current criteria of the American college of radiology mammography accreditation program, published by the American college of radiology, or meets an equivalent standard adopted by the department. The department shall make copies of those criteria available to the public.

(3) The department may withdraw the mammography authorization for a radiation machine if it does not meet the standards set forth in subsection (2) of this section.

(4) The department shall provide an opportunity for a hearing in connection with a denial or withdrawal of mammography authorization.

(5) Upon a finding that a deficiency in a radiation machine used for mammography or a violation of the rules promulgated under this section seriously affects the health, safety, and welfare of individuals upon whom the radiation machine is used for mammography, the department may issue an emergency order summarily withdrawing the mammography authorization of the radiation machine. The department shall incorporate its findings in the order and shall provide an opportunity for a hearing within five (5) working days after issuance of the order. The order shall be effective during the proceedings.

(6) If the department withdraws the mammography authorization of a radiation machine, the radiation machine shall not be used for mammography until reauthorized by the department.

(7) If a person violates the provisions of subsection (1) of this section, the department shall post a conspicuous notice on the unauthorized radiation machine and at the entry to the facility where the radiation machine is located warning the public that the facility is performing mammography using a radiation machine that is a substantial hazard to the public health.

History.

I.C., § 39-3030, as added by 1991, ch. 172, § 1, p. 419; am. and redesign. 2001, ch. 110,
§ 36, p. 373.

STATUTORY NOTES**Compiler's Notes.**

This section was formerly compiled as § 39-3030.

For more on the American college of radiol-

ogy mammography accreditation program, see <http://www.acr.org / accreditation / mammography.aspx>.

56-1045. Inspection. — The department or its duly authorized representative shall have the power to enter at all reasonable times upon any private or public property for the purpose of determining whether or not

there is compliance with or violation of the provisions of sections 56-1041 through 56-1053, Idaho Code, and rules issued thereunder, except that entry into areas under the exclusive jurisdiction of the federal government, or security areas under the direct or indirect jurisdiction of the federal government, shall be effected only with the concurrence of the federal government or its duly designated representative.

History.

I.C., § 56-1045, as added by 2001, ch. 110,
§ 40, p. 373.

56-1046. Records. — (1) The department shall require each person who possesses or uses an x-ray producing machine to maintain necessary records relating to its receipt, use, storage, transfer, or disposal and such other records as the department may require which will permit the determination of the extent of occupational and public exposure from the x-ray producing machine. Copies of these records shall be submitted to the department on request. These requirements are subject to such exemptions as may be provided by rule.

(2) The department may by rule establish standards requiring that personnel monitoring be provided for any employee potentially exposed to x-rays and may provide for the reporting to any employee of his x-ray exposure record.

History.

I.C., § 56-1046, as added by 2001, ch. 110,
§ 41, p. 373.

56-1047. Federal-state agreements — Authorized — Effect as to federal licenses. — (1) The governor, on behalf of this state, is authorized to enter into agreements with the federal government providing for discontinuance of certain of the federal government's responsibilities with respect to x-ray producing machines and the assumption thereof by this state pursuant to sections 56-1041 through 56-1053, Idaho Code.

(2) Any person who, on the effective date of an agreement under subsection (1) of this section, possesses a license issued by the federal government, shall be deemed to possess the same pursuant to a license issued under sections 56-1041 through 56-1053, Idaho Code, which shall expire either ninety (90) days after the receipt from the department of a notice of expiration of such license or on the date of expiration specified in the federal license, whichever is earlier.

History.

I.C., § 56-1047, as added by 2001, ch. 110,
§ 42, p. 373.

56-1048. Inspection agreements and training programs. — (1) The department is authorized to enter into an agreement or agreements with the federal government, other states, or interstate agencies, whereby this state will perform on a cooperative basis with the federal government,

other states, or interstate agencies, inspections or other functions relating to control of x-ray producing machines.

(2) The department may institute training programs for the purpose of qualifying personnel to carry out the provisions of sections 56-1041 through 56-1053, Idaho Code, and may make said personnel available for participation in any program or programs of the federal government, other states, or interstate agencies in furtherance of the purposes of such sections.

History.

I.C., § 56-1048, as added by 2001, ch. 110,
§ 43, p. 373.

56-1049. Administrative procedure. — In any proceeding under sections 56-1041 through 56-1053, Idaho Code, for the issuance or modification or repeal of rules relating to control of x-ray producing machines, the department shall comply with the requirements of chapter 52, title 67, Idaho Code.

Notwithstanding any other provision of sections 56-1041 through 56-1053, Idaho Code, whenever the department finds that an emergency exists requiring immediate action to protect the public health, safety or general welfare, the department may, without notice or hearing, issue a rule or order reciting the existence of such emergency and require that such action be taken as is necessary to meet the emergency. Such rules or orders shall be effective immediately.

History.

I.C., § 56-1049, as added by 2001, ch. 110,
§ 44, p. 373.

56-1050. Injunction proceedings. — Notwithstanding the existence or use of any other remedy, whenever any person has engaged in, or is about to engage in, any acts or practices which constitute or will constitute a violation of any provision of sections 56-1041 through 56-1053, Idaho Code, or any rule or order issued thereunder, the attorney general, upon the request of the department, after notice to such person and opportunity to comply, may make application to the appropriate court for an order enjoining such acts or practices, or for an order directing compliance, and upon a showing by the department that such person has engaged in, or is about to engage in, any such acts or practices, a permanent or temporary injunction, restraining order, or other order may be granted.

History.

I.C., § 56-1050, as added by 2001, ch. 110,
§ 45, p. 373.

STATUTORY NOTES

Cross References.

Attorney general, § 67-1401 et seq.

56-1051. Prohibited uses. — (1) It shall be unlawful for any person to

use, manufacture, produce, transport, transfer, receive, acquire, own or possess any x-ray producing machine unless licensed by or registered with, or exempted by the department in accordance with the provisions of sections 56-1041 through 56-1053, Idaho Code.

(2) It shall be unlawful for any person to use, manufacture, produce, transport, transfer, receive, acquire, own or possess any other x-ray producing machine that has been identified by the department as presenting a potential hazard unless such x-ray producing machine is licensed by or registered by the department in accordance with the provisions of sections 56-1041 through 56-1053, Idaho Code.

History.

I.C., § 56-1051, as added by 2001, ch. 110,
§ 46, p. 373.

56-1052. Impounding of materials. — The department shall have the authority in the event of an emergency to impound or order the impounding of x-ray producing machines in the possession of any person who is not equipped to observe or fails to observe the provisions of sections 56-1041 through 56-1053, Idaho Code, or any rules issued thereunder.

History.

I.C., § 56-1052, as added by 2001, ch. 110,
§ 47, p. 373.

56-1053. Penalties. — Any person who violates any of the provisions of sections 56-1041 through 56-1053, Idaho Code, or rules or orders in effect pursuant thereto shall be guilty of a misdemeanor.

History.

I.C., § 56-1053, as added by 2001, ch. 110,
§ 48, p. 373.

STATUTORY NOTES

Cross References.

Penalty for misdemeanor when not otherwise provided, § 18-113.

56-1054. Health quality planning. — (1) It is the intent of the legislature that the department of health and welfare (“the department”) promote improved quality of care and improved health outcomes through investment in health information technology and in patient safety and quality initiatives in the state of Idaho.

(a) Coordinated implementation of health information technology in Idaho will establish widespread use of networked electronic health information or health records to allow quick, reliable and secure access to that information in order to promote patient safety and best practices in health care. This goal is consistent with the mission of the office of the national coordinator for health information technology, established by the president of the United States in 2004, to provide leadership for the development and nationwide implementation of an interoperable health

information technology infrastructure to improve the quality and efficiency of health care and the ability of consumers to manage their care and safety.

(b) Coordinated implementation of statewide patient safety standards will identify uniform indicators of and standards for clinical quality and patient safety as well as uniform requirements for reporting provider achievement of those indicators and standards.

(2) There is hereby created and established within the department a health quality planning commission ("the commission").

(a) By May 1, 2006, and as needed after that date, the governor shall appoint eleven (11) voting members upon assurance of equitable geographic and rural representation, comprising members of the public and private sectors with expertise in health information technology and clinical quality and patient safety. The membership shall represent all major participants in the health care delivery and financing systems. A majority of the commission shall be health care providers or employees of health care providers. One (1) member shall be an Idaho resident representing the public interest. The commission chairperson shall be appointed by the director of the department.

(b) Members of the commission shall be appointed for a term of two (2) years. The term of office shall commence on July 1, 2006. As terms of commission members expire, the governor shall appoint each new member or reappointed member to a term of two (2) years in a manner that is consistent with subsection (a) of this section.

(c) The commission shall meet quarterly and at the call of the chairperson.

(d) Each member of the commission shall be compensated as provided by section 59-509(d), Idaho Code.

(e) Upon the occurrence or declaration of a vacancy in the membership of the commission, the department shall notify the represented entity of that fact in writing and the represented entity shall, within sixty (60) days thereafter, nominate at least one (1) and not more than three (3) persons to fill the vacancy and shall forward the nominations to the governor, who shall appoint from among the nominees a person to be a member of the commission to fill the vacancy. Such appointments shall be for a term of two (2) years.

(f) Members of the commission may be removed by the governor for substantial neglect of duty, gross misconduct in office, or the inability to discharge the duties described in this section, after written notice and opportunity for response.

(g) A majority of the members of the commission shall constitute a quorum for the transaction of all business and the carrying out of commission duties.

(3) The department may dedicate funding to the operations of the commission, subject to appropriation from the legislature. The department shall seek federal matching funds and additional private sector funding for commission operations.

(4) The commission shall perform the following duties related to health information technology planning:

- (a) Monitor the effectiveness of the Idaho health data exchange; and
- (b) Make recommendations to the legislature and the department on opportunities to improve the capabilities of health information technology in the state.

(5) The commission may use the information generated by the Idaho health data exchange and other data sources to promote health and patient safety planning. The commission may perform the following duties related to health quality and patient safety planning, provided that performance of these duties may include contracting with and supervising independent entities for the performance of some or all of these duties:

- (a) Analyze existing clinical quality assurance and patient safety standards and reporting;
- (b) Identify best practices in clinical quality assurance and patient safety standards and reporting;
- (c) Recommend a mechanism or mechanisms for the uniform adoption of certain best practices in clinical quality assurance and patient safety standards and reporting including, but not limited to, the creation of regulatory standards;
- (d) Monitor and report appropriate indicators of quality and patient safety;
- (e) Recommend a sustainable structure for leadership of ongoing clinical quality and patient safety reporting in Idaho;
- (f) Recommend a mechanism or mechanisms to promote public understanding of provider achievement of clinical quality and patient safety standards;
- (g) Provide quarterly progress reports to the director of the department and to the legislative health care task force. An annual report shall be due to the director, the legislative health care task force and the senate and house of representatives health and welfare committees on June 30 of each year; and
- (h) In regard to the commission's duties provided for in this section, the commission is directed to ensure that such duties are developed and implemented in such a manner and in such forms or formats as to result in health care data that will be readily understood by the citizens of this state.

History.

I.C., § 56-1054, as added by 2006, ch. 243, § 1, p. 737; am. 2007, ch. 171, § 1, p. 503; am.

2008, ch. 364, § 1, p. 996; am. 2010, ch. 56, § 1, p. 104.

STATUTORY NOTES

Amendments.

The 2007 amendment, by ch. 171, in subsection (2)(b), substituted "two (2) years" for "one (1) year" and "June 30, 2008" for "June 30, 2007"; and in subsections (4)(d) and (5)(f), substituted "November 30, 2007" for "November 30, 2006" and "June 30, 2008" for "June 30, 2007."

The 2008 amendment, by ch. 364, in paragraph (2)(b), in the second sentence, deleted

"and shall expire on June 30, 2008" from the end and added the last sentence; in paragraph (2)(c), substituted "quarterly" for "monthly"; added the last sentence in paragraph (2)(e); in paragraph (4)(d), in the first sentence, deleted "including an interim status report due to the director and the legislative health care task force by November 30, 2007" from the end, in the second sentence, substituted "An annual" for "The final" and "June 30

of each year” for “June 30, 2008,” and in the last sentence, substituted “annual” for “final,” and inserted “June 30, 2008”; and rewrote subsection (5) to the extent that a detailed comparison is impracticable.

The 2010 amendment, by ch. 56, rewrote subsection (4) to the extent that a detailed comparison is impracticable; in subsection (5), inserted “and other data sources” after “data exchange”; rewrote paragraph (5)(d) which formerly read: “Recommend a mechanism or mechanisms to promote public understanding of provider achievement of clinical quality and patient safety standards”; in paragraph (5)(e), substituted “reporting” for “improvement”; added paragraph (5)(f); re-

designated former paragraphs (5)(f) and (5)(g) as paragraphs (5)(g) and (5)(h); and in paragraph (5)(g), deleted “and a final report shall be due by June 30, 2010” from the end.

Compiler’s Notes.

On April 24, 2004, the president of the United States issued an executive order establishing the position of national coordinator for health information technology. See <http://www.hhs.gov/healthit/oncl/mission>.

For more on the Idaho health data exchange, see <http://www.idaho.hde.org/dsite>.

The words enclosed in parentheses so appeared in the law as enacted.

CHAPTER 11

IDAHO FAMILY ASSET BUILDING INITIATIVE

SECTION.

56-1101. Definitions.

56-1102. Legislative findings.

56-1103. Persons qualifying as account holders.

56-1104. Approved purpose of account — Emergency withdrawal — Removal of account holder from program.

56-1105. Required account features — Matching moneys.

SECTION.

56-1106. Individual development account advisory board — Powers and duties.

56-1107. Fiduciary organizations — Authority and duties.

56-1108. Public assistance — Eligibility determination.

56-1101. Definitions. — As used in this chapter, unless the context requires otherwise:

(1) “Account holder” means a member of a low-income household who is the named depositor of an individual development account.

(2) “Board” means the individual development account advisory board as established pursuant to the provisions of this chapter.

(3) “Fiduciary organization” means a nonprofit, fundraising organization that is exempt from taxation under section 501(c)(3) of the Internal Revenue Code, approved by the state, including any Indian tribe as defined in section 4(12) of the native American housing assistance and self-determination act of 1996 (25 U.S.C. section 4103(12)) [4103(13)] and any tribal subsidiary, subdivision, or other wholly owned tribal entity.

(4) “Financial institution” means any state bank, national bank, savings bank, savings and loan association, credit union, insurance company, brokerage firm or other similar entity that insures the deposits of its investors and is authorized to do business in this state.

(5) “Individual development account” means a contract between an account holder and a fiduciary organization, for the deposit of funds into a financial institution by the account holder, and the deposit of matching funds into the financial institution by the fiduciary organization from private and public contributions made to the fiduciary organization for such

purpose, to allow the account holder to accumulate assets for use toward achieving a specific purpose approved by the fiduciary organization.

(6) “Low-income household” means a single person or family whose adjusted annual income is less than two hundred percent (200%) of the annual federal poverty guideline.

History.

I.C., § 56-1101, as added by 2002, ch. 149,
§ 1, p. 435.

STATUTORY NOTES

Federal References.

Section 501(c)(3) of the Internal Revenue Code, referred to in this section, appears as 26 U.S.C.S. § 501(c)(3).

was added by the compiler to account for the 2008 amendment of 25 USCS § 4103 which renumbered paragraph (12) as paragraph (13).

Compiler’s Notes.

The bracketed insertion in subsection (13)

The reference enclosed in parentheses so appeared in the law as enacted.

56-1102. Legislative findings. — The legislature finds that:

(1) The problem of poverty will not be solved solely by government programs and income subsidies.

(2) It is in the best interest of all Idahoans to structure incentives in a way that will result in a greater likelihood that low-income and working-poor individuals will attain self-sufficiency.

(3) It is in the best interest of all Idahoans to encourage low-income individuals, neighborhoods and communities to benefit from the developments achieved through the growth in assets and investments.

(4) Achieving self-sufficiency and assessing economic opportunity for low-income and working-poor individuals can be addressed through public policy that invests in asset accumulation and is supported by private sector philanthropy.

(5) Providing a structured savings situation for low-income and working-poor individuals enhances their chances of fulfilling major life goals and opportunities and incorporates them into the economic mainstream.

(6) The state has an opportunity to take advantage of private and public resources by making the transition to an asset-based antipoverty strategy. Those resources include, but are not limited to, the assets for independence act (42 U.S.C. section 604) and the workforce investment act (P.L. 105-220).

(7) Investment through an individual development account program will help lower-income households obtain the assets they need to succeed. Communities and this state will experience resultant economic and social benefits accruing from the promotion of job training and higher education, home ownership and small business development.

(8) It is desirable for this state to enact legislation that enables an authorized fiduciary organization sufficient flexibility to receive private, state and federal moneys for individual development accounts. The legislature should periodically review the provisions of this chapter to ensure that this state maximizes the receipt of available federal moneys for individual development accounts.

History.

I.C., § 56-1102, as added by 2002, ch. 149,
§ 1, p. 435.

STATUTORY NOTES**Federal References.**

The assets for independence act, referred to in subsection (6), appears in a note following 42 U.S.C.S. § 604.

The federal workforce investment act, referred to in subsection (6), generally appears

throughout titles 20 and 29 of the United States Code.

Compiler's Notes.

The reference enclosed in parentheses so appeared in the law as enacted.

56-1103. Persons qualifying as account holders. — (1) A person who qualifies to become an account holder may enter into an agreement with a fiduciary organization for the establishment of an individual development account.

(2) A person is qualified to become an account holder if the person is a member of a low-income household.

(3) A person applying to establish an account must enroll in a personal development plan developed by the person and the fiduciary organization. The plan must provide the person with financial training and counseling, career or business planning and other services designed to increase the independence of the person and the person's household through achievement of the account's approved purpose.

History.

I.C., § 56-1103, as added by 2002, ch. 149,
§ 1, p. 435.

56-1104. Approved purpose of account — Emergency withdrawal — Removal of account holder from program. — (1) A person may establish an individual development account only for a purpose approved by a fiduciary organization. Disbursements from an account for an approved purpose shall be made directly by the fiduciary organization on behalf of the account holder but in no event shall the fiduciary organization make a disbursement for an approved purpose directly to the account holder. Purposes that the fiduciary organization may approve are:

(a) Educational costs for any family member eighteen (18) years of age or older, at an accredited institution of postsecondary education.

(b) The purchase of a primary residence. In addition to payment on the purchase price of the residence, account moneys may be used to pay any usual or reasonable settlement, financing or other closing costs. The account holder must not have owned or held any interest in a residence during the three (3) years prior to making the purchase. However, this three (3) year period shall not apply to displaced homemakers or other individuals who have lost home ownership as a result of divorce.

(c) The capitalization of a small business. Account moneys may be used for capital, plant, equipment and inventory expenses or for working capital pursuant to a business plan. The business plan must have been developed through a financial institution, nonprofit microenterprise program or other qualified agent demonstrating business expertise and have

been approved by the fiduciary organization. The business plan must include a description of the services or goods to be sold, a marketing plan and projected financial statements.

(2)(a) If an emergency occurs, an account holder may withdraw all or part of the account holder's deposits to an individual development account for a purpose not described in subsection (1) of this section. As used in this paragraph, an approved emergency includes making payments for necessary medical expenses, to avoid eviction of the account holder from the account holder's residence and for necessary living expenses following a loss of employment.

(b) The account holder must reimburse the account for the amount withdrawn under this subsection within twelve (12) months after the date of the withdrawal. Failure of an account holder to make a timely reimbursement to the account is grounds for removing the account holder from the individual development account program. Until the reimbursement has been made in full, an account holder shall not be approved for matching funds or accrued interest on matching funds.

(3) If an account holder withdraws, or directs the withdrawal, of moneys from an individual development account for other than an approved purpose, the fiduciary organization may remove the account holder from the program.

(4) If an account holder moves from the area where the program is conducted or is otherwise unable to continue in the program, the fiduciary organization may remove the account holder from the program.

(5) If an account holder is removed from the program under subsection (2), (3) or (4) of this section, the account holder shall retain moneys he or she deposited in the account, including interest earned. In the event of the death of the account holder, moneys deposited in the account by the account holder and interest earned on those deposits shall be distributed to the designated beneficiary of the account and, if there is none, then according to the laws of the state of Idaho as moneys of the estate of the account holder. If the account holder is removed from the program or in the event of the account holder's death, all matching deposits in the account and all interest earned on matching deposits shall revert to the fiduciary organization. The fiduciary organization shall use the reverted funds as a source of matching deposits for other accounts.

History.

I.C., § 56-1104, as added by 2002, ch. 149,
§ 1, p. 435.

56-1105. Required account features — Matching moneys. —

(1) The fiduciary organization shall structure the accounts to have the following features:

(a) The fiduciary organization matches amounts deposited by the account holder according to a formula established by the fiduciary organization. The fiduciary organization shall deposit not less than one dollar (\$1.00) nor more than five dollars (\$5.00) into the account for each one dollar (\$1.00) deposited by the account holder.

(b) The matching deposits by the fiduciary organization to the individual development account are placed in a savings account that is controlled by the fiduciary organization and held separately from the savings account of the account holder.

(2) Deposits by a fiduciary organization to an account shall not exceed three thousand dollars (\$3,000) in any twelve (12) month period.

(3) The total amount paid into an individual development account during its existence, including amounts from deposits, matching deposits and interest or investment earnings, may not exceed twenty thousand dollars (\$20,000).

(4) Nothing in this chapter shall be construed to create an entitlement to matching moneys. The number of individuals who may receive disbursement of matching philanthropic moneys by sponsoring organizations pursuant to the provisions of this chapter shall necessarily be limited by the amount of philanthropic moneys available in any given year for such purpose.

History.

I.C., § 56-1105, as added by 2002, ch. 149,
§ 1, p. 435.

56-1106. Individual development account advisory board — Powers and duties. — There is hereby created the individual development account advisory board. The board shall consist of the administrator of the division of financial management or his designee who shall serve as chair, the director of the department of finance or designee, the director of the department of health and welfare or designee, the director of the department of commerce or designee, the chairman of the Idaho state tax commission or designee, and the superintendent of public instruction or designee. A quorum shall be necessary to transact business. Members of the board shall be compensated by their appointing entity. The individual development account board shall:

(1) Develop and administer the individual development account program in a manner consistent with this chapter through the adoption of guidelines and procedures, and rules adopted in compliance with chapter 52, title 67, Idaho Code;

(2) Retain professional services, if necessary, including accountants, auditors, consultants and other experts;

(3) Seek rulings and other guidance, as necessary, from the United States department of the treasury, the internal revenue service and the state tax commission relating to the program;

(4) Make changes to the program required for the participants in the program to obtain the federal income tax benefits or treatment provided by section 529 of the Internal Revenue Code of 1986, as amended.

(5) Interpret, in rules, policies, guidelines and procedures, the provisions of this chapter broadly in light of its purpose and objectives; and

(6) Approve fiduciary organizations to implement the individual development account program and administer moneys for individual development

account purposes. In making the selections, the board shall consider factors including, but not limited to:

- (a) The ability of the fiduciary organization to implement and administer the individual development account program, including the ability to verify account holder eligibility, certify that matching deposits are used only for approved purposes and exercise general fiscal accountability;
- (b) The capacity of the fiduciary organization to provide or raise matching funds for the deposits of account holders;
- (c) The capacity of the fiduciary organization to provide financial counseling and other related services to account holders;
- (d) The links that the fiduciary organization has to other activities and programs designed to increase the independence of this state's lower-income households through education and training, home ownership and small business development; and
- (e) The ability to meet criteria established by the federal government relating to individual development account programs.

History.

I.C., § 56-1106, as added by 2002, ch. 149,
§ 1, p. 435.

STATUTORY NOTES

Cross References.

Administrator of division of financial man-
agement, § 67-1910.
Chairman of state tax commission, § 63-
102.
Director of department of commerce, § 67-
4702.
Director of department of finance, § 67-
2701.

Director of department of health and wel-
fare, § 56-1003.
Superintendent of public instruction, § 67-
1501 et seq.

Federal References.

Section 529 of the Internal Revenue Code of
1986, referred to in subsection (4), is codified
as 26 U.S.C.S. § 529.

56-1107. Fiduciary organizations — Authority and duties. —

- (1) Subject to rules of the individual development account advisory board, a fiduciary organization has sole authority over, and responsibility for, the administration of individual development accounts. The responsibility of the fiduciary organization extends to all aspects of the account program, including marketing to participants, soliciting matching contributions, counseling account holders, providing financial training, and conducting required verification and compliance activities. The fiduciary organization may establish program provisions as the organization believes necessary to ensure account holder compliance with the provisions of this chapter.
- (2) A fiduciary organization may act in partnership with other entities, including businesses, government agencies, nonprofit organizations, community development corporations, community action programs, housing authorities and congregations to assist in the fulfillment of fiduciary organization responsibilities under this chapter.
- (3) A fiduciary organization may use a reasonable portion of moneys allocated to the individual development account program for administration, operation and evaluation purposes.
- (4) A fiduciary organization selected to administer moneys for individual

development account purposes or to receive tax deductible contributions shall provide the board with an annual report of the fiduciary organization's individual development account program activity. The report shall be filed no later than ninety (90) days after the end of the fiscal year of the fiduciary organization, or November 1 of each year, whichever occurs first. The report shall include, but not be limited to, the following information for the preceding year:

- (a) The number of individual development accounts administered by the fiduciary organization;
- (b) The amount of deposits and matching deposits for each account;
- (c) The purpose of each account;
- (d) The amount of withdrawals made for approved purposes, and the amount of withdrawals made for nonapproved purposes;
- (e) The determination of whether certain donors are corporations; and
- (f) Any other information the board may require for the purpose of making a return on investment analysis.

History.

I.C., § 56-1107, as added by 2002, ch. 149,
§ 1, p. 435.

56-1108. Public assistance — Eligibility determination. — Moneys in an individual development account established pursuant to the provisions of this chapter, or moneys withdrawn from an individual development account on behalf of an account holder for an approved purpose, shall not be counted as an asset of the account holder for the purpose of eligibility determination for any public assistance offered by the state of Idaho or a political subdivision of the state of Idaho.

History.

I.C., § 56-1108, as added by 2002, ch. 149,
§ 1, p. 435.

CHAPTER 12

IDAHO STATE INDEPENDENT LIVING COUNCIL

SECTION.

- 56-1201. Idaho state independent living council — Legislative intent.
- 56-1202. Idaho state independent living council — Powers.
- 56-1203. Directors of Idaho state independent living council.

SECTION.

- 56-1204. Additional powers and duties.
- 56-1205. Allocation of funds by designated state units.
- 56-1206. Idaho state independent living council fund.

56-1201. Idaho state independent living council — Legislative intent. — The Idaho state independent living council, as hereby created and as provided for in this chapter, is not a single department of state government unto itself, nor is it a part of any of the twenty (20) departments of state government authorized by section 20, article IV, of the constitution of the state of Idaho, or of the departments prescribed in section 67-2402, Idaho Code.

It is legislative intent that the Idaho state independent living council operate and be recognized not as a state agency or department, but as a governmental entity whose creation has been authorized by the state, much in the same manner as other single purpose districts. Pursuant to this intent, and because the Idaho state independent living council is not a state department or agency, the Idaho state independent living council is exempt from the required participation in the services of the purchasing agent or employee liability coverage, as rendered by the department of administration. However, nothing shall prohibit the Idaho state independent living council from entering into contractual arrangements with the department of administration, or any other department of state government or an elected constitutional officer, for these or any other services.

It is legislative intent to require compliance with the state merit system, and to affirm the participation of the Idaho state independent living council in the public employee retirement system, chapter 13, title 59, Idaho Code, and the personnel system, chapter 53, title 67, Idaho Code.

It is also legislative intent that the matters of location of deposit of Idaho state independent living council funds, or the instruments or documents of payment from those funds shall be construed as no more than items of convenience for the conduct of business, and in no way reflect upon the nature or status of the Idaho state independent living council as an entity of government.

This section merely affirms that the Idaho state independent living council created under this chapter is not a state agency and in no way changes the character of it as it existed prior to this chapter. The functions previously performed by the state independent living council created by executive order no. 2002-05, are hereby transferred to the Idaho state independent living council pursuant to this chapter.

History.

I.C., § 56-1201, as added by 2004, ch. 327,
§ 1, p. 977.

STATUTORY NOTES

Compiler's Notes.

Both S.L. 2004, chapter 261 and S.L. 2004, chapter 327 enacted new chapters designated as chapter 12 of title 56. The provisions enacted by chapter 327 were retained as chapter

12 of title 56 (§§ 56-1201 to 56-1206). The provisions enacted by chapter 261 were redesignated as chapter 13 of title 56 through the use of brackets. That redesignation was made permanent by S.L. 2005, ch. 25.

56-1202. Idaho state independent living council — Powers. — The council shall:

- (1) Be independent of any state agency;
- (2) Adopt bylaws and policies governing its operation;
- (3) Provide to the council's employees the employee benefit package offered to state of Idaho employees; and
- (4) Meet at least quarterly.

History.

I.C., § 56-1202, as added by 2004, ch. 327,
§ 1, p. 977.

56-1203. Directors of Idaho state independent living council. —

Directors of the Idaho state independent living council shall be appointed by, and serve at the pleasure of, the governor. The governor shall comply with the provisions of 29 U.S.C. section 796d(b) and 34 CFR 364.21 in making appointments to the council. The council shall select an executive director to carry out the executive functions of the council.

History.

I.C., § 56-1203, as added by 2004, ch. 327,
§ 1, p. 977.

56-1204. Additional powers and duties. — The council shall carry out those powers and duties set forth in 29 U.S.C. section 796d(c) and 34 CFR 364.21. The council shall also:

(1) Assess the need for services for Idahoans with disabilities and advocate with decision makers;

(2) Supervise and evaluate such staff as may be necessary to carry out the functions of the council;

(3) Ensure that all regularly scheduled meetings of the council are open to the public and that sufficient advance notice of meetings is provided pursuant to the open meeting law;

(4) Prepare reports and make recommendations, as necessary;

(5) Perform other activities the council deems necessary to increase the ability of Idahoans with disabilities to live independently;

(6) Promulgate rules, as may be necessary, in compliance with chapter 52, title 67, Idaho Code.

History.

I.C., § 56-1204, as added by 2004, ch. 327,
§ 1, p. 977.

56-1205. Allocation of funds by designated state units. — The Idaho division of vocational rehabilitation shall enter into an agreement with the Idaho state independent living council for the allocation of funds to support the council's activities. The funds shall be deposited in the Idaho state independent living council fund created pursuant to section 56-1206, Idaho Code. Such an agreement shall not be subject to the competitive bidding requirements as provided by law, and shall be limited to the amounts appropriated by the legislature or the United States congress.

History.

I.C., § 56-1205, as added by 2004, ch. 327,
§ 1, p. 977.

STATUTORY NOTES**Compiler's Notes.**

For more on Idaho division of vocational

rehabilitation, see <http://www.vr.idaho.gov/index.shtml>.

56-1206. Idaho state independent living council fund. — There is hereby created in the state treasury the Idaho state independent living council fund. Moneys in the fund shall consist of appropriations, grants, federal funds, donations, gifts, or moneys from any other source. Moneys in the fund are hereby perpetually appropriated for purposes provided in this chapter. The state treasurer shall invest idle moneys in the fund and any interest received on those investments shall be returned to the fund.

History.
I.C., § 56-1206, as added by 2004, ch. 327,
§ 1, p. 977.

STATUTORY NOTES

Cross References.
State treasurer, § 67-1201 et seq.

CHAPTER 13
LONG-TERM CARE PARTNERSHIP PROGRAM

SECTION.	SECTION.
56-1301. Short title. [Contingent effective date — See notes.]	56-1304. Specific eligibility. [Contingent effective date — See notes.]
56-1302. Definitions. [Contingent effective date — See notes.]	56-1305. Administration. [Contingent effective date — See notes.]
56-1303. Long-term care partnership program. [Contingent effective date — See notes.]	56-1306. Notice requirement. [Contingent effective date — See notes.]

56-1301. Short title. [Contingent effective date — See notes.] — This chapter shall be known and may be cited as the “Idaho Long-term Care Partnership Program.”

History. § 1, p. 736; am. and redesisg. 2005, ch. 25,
I.C., § 56-1201, as added by 2004, ch. 261, § 113, p. 82.

STATUTORY NOTES

Compiler’s Notes. Both S.L. 2004, chapter 261 and S.L. 2004, chapter 327 enacted new chapters designated as chapter 12 of title 56. The provisions enacted by chapter 327 were retained as chapter 12 of title 56 (§§ 56-1201 to 56-1206). The provisions enacted by chapter 261 were redesignated as chapter 13 of title 56 through the use of brackets. The redesignation was made permanent by S.L. 2005, ch. 25.

Effective Dates. Section 2 of S.L. 2004, ch. 261 provided “This act shall be in full force and effect sixty (60) days after the date of repeal of the restrictions to asset protection contained in the Omnibus Budget Reconciliation Act of 1993 (public law 103-66, 107 Stat. 312).”

56-1302. Definitions. [Contingent effective date — See notes.] — The following words and phrases when used in this chapter have the meanings given to them unless the context clearly indicates otherwise:
(1) “Asset disregard” means the total assets an individual owns and may retain under medicaid and still qualify for benefits at the time the individual

applies for benefits if the individual is a beneficiary of a long-term care partnership program approved policy.

(2) "Department" means the department of health and welfare.

(3) "Long-term care partnership program approved policy" means a long-term care insurance policy which is approved by the department of insurance and is provided through state approved long-term care insurers through the Idaho long-term care partnership program.

(4) "Medicaid" means the federal medical assistance program established under title XIX of the social security act.

History.

I.C., § 56-1202, as added by 2004, ch. 261,

§ 1, p. 736; am. and redesign. 2005, ch. 25,

§ 114, p. 82; am. 2007, ch. 253, § 1, p. 756.

STATUTORY NOTES

Amendments.

The 2007 amendment, by ch. 253, deleted the subsection (1)(a) designation and subsection (1)(b), which read: "Has exhausted the benefits of the policy."

Federal References.

Title XIX of the social security act, referred to in subsection (4), is codified as 42 U.S.C.S. § 1396 et seq.

Effective Dates.

Section 2 of S.L. 2004, ch. 261 provided "This act shall be in full force and effect sixty (60) days after the date of repeal of the restrictions to asset protection contained in the Omnibus Budget Reconciliation Act of 1993 (public law 103-66, 107 Stat. 312)."

Section 4 of S.L. 2007, ch. 253 declared an emergency retroactively to January 1, 2007 and approved March 28, 2007.

56-1303. Long-term care partnership program. [Contingent effective date — See notes.] — (1) Upon the repeal of restrictions to asset protection contained in the omnibus budget reconciliation act of 1993 (public law 103-66, 107 Stat. 312), there shall be established the Idaho long-term care partnership program, to be administered by the department with the assistance of the department of insurance to do the following:

- (a) Provide incentives for individuals to insure against the costs of providing for their long-term care needs;
- (b) Provide a mechanism for individuals to qualify for coverage of the cost of their long-term care needs under medicaid without first being required to substantially exhaust their resources;
- (c) Provide counseling services to individuals planning for their long-term care needs; and
- (d) Alleviate the financial burden on the state's medical assistance program by encouraging the pursuit of private initiatives.

(2) In the case of an individual who has received or is entitled to receive benefits under a long-term care partnership program policy, certain resources of that individual, as described in subsection (3) of this section, shall not be considered by the department as a determination of any of the following:

- (a) Eligibility for medicaid;
- (b) Amount of any medicaid payment; or
- (c) Any subsequent recovery by the state of a payment for medical services.

(3) The department shall promulgate necessary rules and amendments to the state plan to allow for asset disregard. To provide asset disregard, for

purchasers of a long-term care partnership program policy, the department shall count insurance benefits paid under the policy toward asset disregard to the extent the payments are for covered services under the long-term care partnership program policy.

History.

I.C., § 56-1203, as added by 2004, ch. 261, § 1, p. 736; am. and redesign. 2005, ch. 25, § 115, p. 82; am. 2007, ch. 253, § 2, p. 756.

STATUTORY NOTES**Cross References.**

Department of insurance, § 41-201 et seq.

Amendments.

The 2007 amendment, by ch. 253, in the introductory paragraph in subsection (2), substituted "In the case of an individual who has received or is entitled to receive benefits" for "Upon exhausting benefits" and "that individual" for "an individual."

Compiler's Notes.

The reference enclosed in parentheses so appeared in the law as enacted.

Effective Dates.

Section 2 of S.L. 2004, ch. 261 provided "This act shall be in full force and effect sixty (60) days after the date of repeal of the restrictions to asset protection contained in the Omnibus Budget Reconciliation Act of 1993 (public law 103-66, 107 Stat. 312)."

Section 4 of S.L. 2007, ch. 253 declared an emergency retroactively to January 1, 2007 and approved March 28, 2007.

56-1304. Specific eligibility. [Contingent effective date — See notes.] — (1) An individual who is a beneficiary of a long-term care partnership program policy is eligible for assistance under medicaid using the asset disregard under section 56-1303(3), Idaho Code.

(2) If the program is discontinued, an individual who purchased a long-term care partnership policy prior to the date the program is discontinued shall be eligible to receive asset disregard.

(3) The department may enter into reciprocal agreements with other states to extend the asset disregard to residents of the state who purchased long-term care policies in another state which has a substantially similar asset disregard program to the program under section 56-1303, Idaho Code.

History.

I.C., § 56-1204, as added by 2004, ch. 261, § 1, p. 736; am. and redesign. 2005, ch. 25, § 116, p. 82.

STATUTORY NOTES**Effective Dates.**

Section 2 of S.L. 2004, ch. 261 provided "This act shall be in full force and effect sixty (60) days after the date of repeal of the

restrictions to asset protection contained in the Omnibus Budget Reconciliation Act of 1993 (public law 103-66, 107 Stat. 312)."

56-1305. Administration. [Contingent effective date — See notes.] — The department and the department of insurance are authorized to adopt rules to implement the provisions of this chapter and for its administration.

History.

I.C., § 56-1205, as added by 2004, ch. 261, § 1, p. 736; am. and redesign. 2005, ch. 25, § 117, p. 82.

STATUTORY NOTES

Cross References.

Department of insurance, § 41-201 et seq.

Effective Dates.

Section 2 of S.L. 2004, ch. 261 provided

"This act shall be in full force and effect sixty (60) days after the date of repeal of the restrictions to asset protection contained in the Omnibus Budget Reconciliation Act of 1993 (public law 103-66, 107 Stat. 312)."

56-1306. Notice requirement. [Contingent effective date — See notes.] — (1) An insurer issuing or marketing policies that qualify as partnership policies shall explain the benefits associated with a partnership policy by providing an asset disregard notice indicating that at the time of issue the coverage is an approved long-term care partnership policy. This asset disregard notice shall be provided to the policyholder or certificate holder no later than the time of policy or certificate delivery. This asset disregard notice shall also provide disclosure that the partnership status may be lost if the insured moves to a different state or modifies the coverage after issue, or if changes in federal or state laws occur.

(2) The notice to the consumer under subsection (1) of this section shall be developed by the director of the department of insurance.

History.

I.C., § 56-1206, as added by 2004, ch. 261,

§ 1, p. 736; am. and redesign. 2005, ch. 25, § 118, p. 82; am. 2007, ch. 253, § 3, p. 756.

STATUTORY NOTES

Cross References.

Director of department of insurance, § 41-202.

Amendments.

The 2007 amendment, by ch. 253, rewrote subsection (1), which formerly read: "A long-term care insurance policy issued after the effective date of this chapter shall contain a notice provision to the consumer detailing in plain language the current law pertaining to asset disregard and asset tests."

Effective Dates.

Section 2 of S.L. 2004, ch. 261 provided "This act shall be in full force and effect sixty (60) days after the date of repeal of the restrictions to asset protection contained in the Omnibus Budget Reconciliation Act of 1993 (public law 103-66, 107 Stat. 312)."

Section 4 of S.L. 2007, ch. 253 provided that the act should take effect on and after July 1, 2007.

CHAPTER 14

IDAHO HOSPITAL ASSESSMENT ACT

SECTION.

56-1401. Short title — Legislative intent.

56-1402. Definitions.

56-1403. Hospital assessment fund established.

56-1404. Assessments.

56-1405. Review of annual assessment amount.

56-1406. Inpatient and outpatient adjustment payments.

SECTION.

56-1407. Timing of payments and assessments.

56-1408. Exemptions.

56-1409. Multihospital locations, hospital closure and new hospitals.

56-1410. Applicability.

56-1401. Short title — Legislative intent. — (1) This chapter shall be known and may be cited as the "Idaho Hospital Assessment Act."

(2) It is the intent of the legislature to encourage the maximization of financial resources eligible and available for medicaid services by establishing a fund within the Idaho department of health and welfare to receive private hospital assessments to use in securing federal matching funds under federally prescribed upper payment limit and disproportionate share hospital programs available through the state medicaid plan.

History.

I.C., § 56-1401, as added by 2010, ch. 186,
§ 7, p. 392.

STATUTORY NOTES**Legislative Intent.**

Section 8 of S.L. 2010, ch. 186 provided “Legislative Intent. It is the intent of the Legislature that Sections 1, 2, 3, 4, 5 and 8 of this act shall be exempt from any freeze on Medicaid price increases mandated by legislative intent language contained in the appropriation for the Department of Health and Welfare for Medical Assistance Services for fiscal year 2011 or by any other Idaho law.

The authority and duties granted to the department in chapter 14, title 56, Idaho Code, and the rulemaking authority granted to the department setting hospital reimbursement rates shall not be affected by any such freeze.”

Effective Dates.

Section 10 of S.L. 2010, ch. 186 provided that this section should take effect on and after July 1, 2012.

56-1402. Definitions. — As used in this chapter:

- (1) “Department” means the department of health and welfare.
- (2) “Disproportionate share hospital” means a hospital that serves a disproportionate share of medicaid low-income patients as compared to other hospitals as determined by department rule.
- (3) “Governmental entity” means and includes the state and its political subdivisions.
- (4) “Hospital” is as defined in section 39-1301(a), Idaho Code.
- (5) “Political subdivision” means a county, city, municipal corporation or hospital taxing district and, as used in this chapter, shall include state licensed hospitals established by counties pursuant to chapter 36, title 31, Idaho Code, or jointly by cities and counties pursuant to chapter 37, title 31, Idaho Code.
- (6) “Private hospital” means a hospital that is not owned by a governmental entity.
- (7) “Upper payment limit” means a limitation established by federal regulations, 42 CFR 447.272 and 42 CFR 447.321, that disallows federal matching funds when state medicaid agencies pay certain classes of hospitals an aggregate amount for inpatient and outpatient hospital services that would exceed the amount that would be paid for the same services furnished by that class of hospitals under medicare payment principles.

History.

I.C., § 56-1402, as added by 2010, ch. 186,
§ 7, p. 392.

STATUTORY NOTES

Legislative Intent.

Section 8 of S.L. 2010, ch. 186 provided "Legislative Intent. It is the intent of the Legislature that Sections 1, 2, 3, 4, 5 and 8 of this act shall be exempt from any freeze on Medicaid price increases mandated by legislative intent language contained in the appropriation for the Department of Health and Welfare for Medical Assistance Services for fiscal year 2011 or by any other Idaho law.

The authority and duties granted to the department in chapter 14, title 56, Idaho Code, and the rulemaking authority granted to the department setting hospital reimbursement rates shall not be affected by any such freeze."

Effective Dates.

Section 10 of S.L. 2010, ch. 186 provided that this section should take effect on and after July 1, 2012.

56-1403. Hospital assessment fund established. — (1) There is hereby created in the office of the state treasurer a dedicated fund to be known as the hospital assessment fund, hereinafter "fund," to be administered by the department of health and welfare, hereinafter "department." The state treasurer shall invest idle moneys in the fund and any interest received on those investments shall be returned to the fund.

(2) Moneys in the fund shall consist of:

- (a) All moneys collected or received by the department from hospital assessments required by this chapter;
- (b) All federal matching funds received by the department as a result of expenditures made by the department that are attributable to moneys deposited in the fund;
- (c) Any interest or penalties levied in conjunction with the administration of this chapter; and
- (d) Any appropriations, federal funds, donations, gifts or moneys from any other sources.

(3) The fund is created for the purpose of receiving moneys in accordance with this section and section 56-1404, Idaho Code. The fund shall not be used to replace any moneys appropriated to the Idaho medical assistance program by the legislature. Moneys in the fund shall be distributed by the department subject to appropriation for the following purposes only:

- (a) Payments to hospitals as required under Idaho's medical assistance program as set forth in sections 56-209b through 56-209d, Idaho Code;
- (b) Reimbursement of moneys collected by the department from hospitals through error or mistake in performing the activities authorized under Idaho's medical assistance program;
- (c) Payments of administrative expenses incurred by the department or its agent in performing the activities authorized by this chapter;
- (d) Payments made to the federal government to repay excess payments made to hospitals from the fund if the assessment plan is deemed out of compliance and after the state has appealed the findings. Hospitals shall refund the payments in question to the assessment fund. The state in turn shall return funds to both the federal government and hospital providers in the same proportion as the original financing. Individual hospitals shall be reimbursed based on the proportion of the individual hospital's assessment to the total assessment paid by all hospitals. If a hospital is unable to refund payments, the state shall develop a payment plan and deduct moneys from future medicaid payments;

- (e) Transfers to any other fund in the state treasury, provided such transfers shall not exceed the amount transferred previously from that other fund into the hospital assessment fund; and
- (f) Making refunds to hospitals pursuant to section 56-1410, Idaho Code.

History.

I.C., § 56-1403, as added by 2010, ch. 186,
§ 7, p. 392.

STATUTORY NOTES**Cross References.**

State treasurer, § 67-1201 et seq.

Legislative Intent.

Section 8 of S.L. 2010, ch. 186 provided "Legislative Intent. It is the intent of the Legislature that Sections 1, 2, 3, 4, 5 and 8 of this act shall be exempt from any freeze on Medicaid price increases mandated by legislative intent language contained in the appropriation for the Department of Health and Welfare for Medical Assistance Services for

fiscal year 2011 or by any other Idaho law. The authority and duties granted to the department in chapter 14, title 56, Idaho Code, and the rulemaking authority granted to the department setting hospital reimbursement rates shall not be affected by any such freeze."

Effective Dates.

Section 10 of S.L. 2010, ch. 186 provided that this section should take effect on and after July 1, 2012.

56-1404. Assessments. — (1) All hospitals, except those exempted under section 56-1408, Idaho Code, shall make payments to the fund in accordance with this chapter. Subject to section 56-1410, Idaho Code, an annual assessment on both inpatient and outpatient services is determined for each qualifying hospital for state fiscal years 2009, 2010 and 2011, in an amount calculated by multiplying the rate, as set forth in subsections (2)(b) and (3)(b) of this section, by the assessment base, as set forth in subsection (5) of this section.

(2)(a) The department shall calculate the private hospital upper payment limit gap for both inpatient and outpatient services. The upper payment limit gap is the difference between the maximum allowable payments eligible for federal match, less medicaid payments not financed using hospital assessment funds. The upper payment limit gap shall be calculated separately for hospital inpatient and outpatient services. Medicaid disproportionate share payments shall be excluded from the calculation.

(b) The department shall calculate the upper payment limit assessment rate for state fiscal years 2009, 2010 and 2011 to be the percentage that, when multiplied by the assessment base as defined in subsection (5) of this section, equals the upper payment limit gap determined in paragraph (a) of this subsection.

(3)(a) The department shall calculate the disproportionate share allotment amount to be paid to private in-state hospitals.

(b) The department shall calculate the disproportionate share assessment rate for private in-state hospitals to be the percentage that, when multiplied by the assessment base as defined in subsection (5) of this section, equals the amount of state funding necessary to pay the private in-state hospital disproportionate share allotment determined in paragraph (a) of this subsection.

(4) For private in-state hospitals, the assessments calculated pursuant to

subsections (2) and (3) of this section shall not be greater than two and one-half percent (2.5%) of the assessment base as defined in subsection (5) of this section.

(5) The assessment base shall be the hospital's net patient revenue for the applicable period. "Net patient revenue" for state fiscal year 2009 shall be determined using the most recent data available from each hospital's fiscal year 2004 medicare cost report on file with the department on June 30, 2008, without regard to any subsequent adjustments or changes to such data. Net patient revenue for state fiscal year 2010 shall be determined using the most recent data available for each hospital's fiscal year 2005 medicare cost report on file with the department on June 30, 2009, without regard to any subsequent adjustments or changes to such data. Net patient revenue for state fiscal year 2011 shall be determined using the most recent data available from each hospital's fiscal year 2006 medicare cost report on file with the department on June 30, 2010, without regard to any subsequent adjustments or changes to such data.

History.

I.C., § 56-1404, as added by 2010, ch. 186,
§ 7, p. 392.

STATUTORY NOTES

Legislative Intent.

Section 8 of S.L. 2010, ch. 186 provided "Legislative Intent. It is the intent of the Legislature that Sections 1, 2, 3, 4, 5 and 8 of this act shall be exempt from any freeze on Medicaid price increases mandated by legislative intent language contained in the appropriation for the Department of Health and Welfare for Medical Assistance Services for fiscal year 2011 or by any other Idaho law.

The authority and duties granted to the department in chapter 14, title 56, Idaho Code, and the rulemaking authority granted to the department setting hospital reimbursement rates shall not be affected by any such freeze."

Effective Dates.

Section 10 of S.L. 2010, ch. 186 provided that this section should take effect on and after July 1, 2012.

56-1405. Review of annual assessment amount. — Each state fiscal year, hospitals shall have at least thirty (30) days prior to implementation to review and verify the assessment base, rate, and the estimated assessment amount.

History.

I.C., § 56-1405, as added by 2008, ch. 91,
§ 1, p. 255.

56-1406. Inpatient and outpatient adjustment payments. — All hospitals, except those exempted under section 56-1408, Idaho Code, shall be eligible for inpatient and outpatient adjustments as follows:

(1) For state fiscal year 2009, the inpatient upper payment limit gap for private hospitals shall be divided by medicaid inpatient days for the same hospitals from calendar year 2007 to establish an average per diem adjustment rate. Each hospital shall receive an annual payment that is equal to the average per diem adjustment rate multiplied by the hospital's calendar year 2007 medicaid inpatient days. For purposes of this section, "hospital medicaid inpatient days" are days of inpatient hospitalization paid

for by the Idaho medical assistance program for the applicable calendar year. For fiscal year 2010, calendar year 2008 inpatient hospital medicaid days shall be utilized to determine the hospital inpatient adjustment payment. For state fiscal year 2011, calendar year 2009 hospital medicaid inpatient days shall be utilized to determine the hospital inpatient adjustment payment. In the event that either the inpatient upper payment limit gap for private hospitals or the available hospital assessment funding is lower than anticipated, the department shall apply an across-the-board factor such that the inpatient payment adjustments are maximized, financed entirely from hospital assessment funding, and do not exceed the Idaho inpatient upper payment limit for private hospitals. Payments shall be made no later than thirty (30) days after the receipt of the last deposit of the hospital assessment required in section 56-1404, Idaho Code.

(2) For state fiscal year 2009, the outpatient upper payment limit gap for private hospitals shall be divided by medicaid outpatient hospital reimbursement for the same hospitals from calendar year 2007 to establish an average percentage adjustment rate. Each hospital, except those exempt under section 56-1408, Idaho Code, shall receive an annual payment that is equal to the average percentage adjustment rate multiplied by the hospital's calendar year 2007 hospital medicaid outpatient reimbursement. For purposes of this section, "hospital outpatient reimbursement" is reimbursement for hospital outpatient services paid for by the Idaho medical assistance program for the applicable calendar year. For state fiscal year 2010, calendar year 2008 hospital medicaid outpatient reimbursement shall be utilized to determine the outpatient hospital adjustment payment. For state fiscal year 2011, calendar year 2009 hospital medicaid outpatient reimbursement shall be utilized to determine the outpatient hospital adjustment payment. In the event that either the outpatient upper payment limit gap for private hospitals or the available hospital assessment funding is lower than anticipated, the department shall apply an across-the-board factor, such that outpatient adjustment payments are maximized, financed entirely from hospital assessment funding, and do not exceed the Idaho outpatient upper payment limit for private hospitals. Payments shall be made no later than thirty (30) days after the receipt of the last deposit of the hospital assessments required in section 56-1404, Idaho Code.

History.

I.C., § 56-1406, as added by 2010, ch. 186, § 7, p. 392.

STATUTORY NOTES**Legislative Intent.**

Section 8 of S.L. 2010, ch. 186 provided "Legislative Intent. It is the intent of the Legislature that Sections 1, 2, 3, 4, 5 and 8 of this act shall be exempt from any freeze on Medicaid price increases mandated by legislative intent language contained in the appropriation for the Department of Health and Welfare for Medical Assistance Services for fiscal year 2011 or by any other Idaho law.

The authority and duties granted to the department in chapter 14, title 56, Idaho Code, and the rulemaking authority granted to the department setting hospital reimbursement rates shall not be affected by any such freeze."

Effective Dates.

Section 10 of S.L. 2010, ch. 186 provided that this section should take effect on and after July 1, 2012.

56-1407. Timing of payments and assessments. — (1) The department shall establish an annual assessment schedule for all payments created under this chapter.

(2) If a hospital fails to pay the full amount of an installment when due, including any extensions granted, there shall be added to the assessment imposed by section 56-1404, Idaho Code, unless waived by the department for reasonable cause, a penalty equal to the lesser of:

(a) An amount equal to five percent (5%) of the assessment installment amount not paid on or before the due date, plus five percent (5%) of the portion thereof remaining unpaid on the last day of each month thereafter; or

(b) An amount equal to one hundred percent (100%) of the assessment installment amount not paid on or before the due date.

(3) For purposes of subsection (2) of this section, payments shall be credited first to unpaid installment amounts rather than to penalty or interest amounts, beginning with the most delinquent installment.

History.

I.C., § 56-1407, as added by 2008, ch. 91,
§ 1, p. 256.

56-1408. Exemptions. — (1) State hospital south in Blackfoot, Idaho, and state hospital north in Orofino, Idaho, and the department of veterans affairs medical center in Boise, Idaho, are exempt from the assessment required by section 56-1404, Idaho Code.

(2) A private hospital that does not provide emergency services through an emergency department and is not categorized as “rehabilitation” or “psychiatric” as provided in section II.C. of the “application for hospital licenses and annual report — 2007” by the bureau of facility standards of the department of health and welfare, is exempt from the assessment required by section 56-1404, Idaho Code.

History.

I.C., § 56-1408, as added by 2008, ch. 91,
§ 1, p. 256; am. 2011, ch. 164, § 18, p. 463.

STATUTORY NOTES

Amendments.

The 2011 amendment, by ch. 164, rewrote subsection (1), which formerly read: “A hospital that is a governmental entity, including a state agency, is exempt from the assessment required by section 56-1404, Idaho Code, unless the exemption is adjudged to be unconstitutional or otherwise invalid, in which case the hospital shall pay such assessment.”

Compiler’s Notes.

For more on bureau of facility standards, see <http://www.healthandwelfare.idaho.gov/Medical/LicensingCertification/FacilityStandards/tabid/223/Default.aspx>.

56-1409. Multihospital locations, hospital closure and new hospitals. — (1) If a hospital conducts, operates or maintains more than one (1) hospital licensed by the department, the hospital shall pay the assessment for each hospital separately.

(2) A hospital, subject to assessments under this chapter, that ceases to conduct hospital operations or maintain its state license or did not conduct hospital operations throughout a calendar or fiscal year, shall have its required assessment adjusted by multiplying the assessment computed under section 56-1404, Idaho Code, by a fraction, the numerator of which is the number of days in the year during which the hospital conducts hospital business, operates a hospital and maintains licensure, and the denominator of which is three hundred sixty-five (365). The hospital shall pay the required assessment computed under section 56-1404, Idaho Code, on the date and in pro rata installments as required by the department for that portion of the state fiscal year during which the hospital operated and maintained state licensure, to the extent not previously paid.

(3) A hospital, subject to assessments under this chapter, that has not been previously licensed as a hospital by the department and that commences hospital operations during a fiscal year, shall pay the required assessment computed under section 56-1404, Idaho Code, and shall be eligible for payment adjustments under section 56-1406, Idaho Code, only after two (2) complete state fiscal years have elapsed and two (2) full fiscal year medicare cost reports are filed with the center for medicare and medicaid services (CMS) after the commencement of operations and on the date as required by the department beginning on the first day of the next state fiscal year.

History.

I.C., § 56-1409, as added by 2008, ch. 91,
§ 1, p. 256.

STATUTORY NOTES

Compiler's Notes.

For more on the center for medicare and
medicaid services (CMS), see [http://
www.cms.gov](http://www.cms.gov).

The abbreviation enclosed in parentheses
so appeared in the law as enacted.

56-1410. Applicability. — (1) The assessment required by section 56-1404, Idaho Code, shall not take effect or shall cease to be imposed, and any moneys remaining in the fund shall be refunded to hospitals in proportion to the amounts paid by such hospitals if:

(a) The fund created in section 56-1403, Idaho Code, is used to replace moneys appropriated to the Idaho medical assistance program by the legislature; or

(b) The payments to hospitals required under section 56-1403(3), Idaho Code, are changed or are not eligible for federal matching funds under the Idaho medical assistance program.

(2) The assessment required by section 56-1404, Idaho Code, shall not take effect or shall cease to be required if the assessment is not approved or is determined to be impermissible under title XIX of the social security act. Moneys in the fund derived from assessments required prior thereto shall be distributed in accordance with section 56-1403(3), Idaho Code, to the extent federal matching funds are not reduced due to the impermissibility of the

assessments, and any remaining moneys shall be refunded to hospitals in proportion to the amounts paid by such hospitals.

History.

I.C., § 56-1410, as added by 2008, ch. 91,
§ 1, p. 257; am. 2009, ch. 34, § 9, p. 95.

STATUTORY NOTES

Amendments.

The 2009 amendment, by ch. 34, rewrote subsection (1)(a), which formerly read: "The appropriation for each state fiscal year 2009, 2010 and 2011 from the general fund for hospital payments under the Idaho medical assistance program is less than that for fiscal year 2008"; and deleted subsection (1)(b), which read: "The department makes changes in its rules that reduce the hospital inpatient

or outpatient payment rates, including adjustment payment rates, in effect on January 1, 2008," redesignating former subsection (1)(c) as subsection (1)(b).

Federal References.

Title XIX of the social security act, referred to in subsection (2), is codified as 42 U.S.C.S. § 1396 et seq.

CHAPTER 15

**IDAHO SKILLED NURSING FACILITY ASSESSMENT
ACT**

SECTION.

56-1501. Short title.
56-1502. Legislative intent.
56-1503. Definitions.
56-1504. Nursing facility assessment fund.
56-1505. Nursing facility assessments.
56-1506. Approval of state plan.
56-1507. Multifacility locations.

SECTION.

56-1508. Termination of assessment.
56-1509. Penalties for failure to pay assessment.
56-1510. Rulemaking authority.
56-1511. Annual nursing facility adjustment payments.

56-1501. Short title. — This chapter shall be known and may be cited as the "Idaho Skilled Nursing Facility Assessment Act."

History.

I.C., § 56-1501, as added by 2009, ch. 221,
§ 1, p. 687.

56-1502. Legislative intent. — It is the intent of the legislature to encourage the maximization of financial resources eligible and available for medicaid services by establishing a fund within the Idaho department of health and welfare to receive nursing facility assessments to use in securing federal matching funds under federally prescribed programs available through the state medicaid plan.

History.

I.C., § 56-1502, as added by 2009, ch. 221,
§ 1, p. 687.

56-1503. Definitions. — As used in this chapter:

- (1) "CMS" means the centers for medicare and medicaid.
- (2) "Department" means the department of health and welfare.

(3) "Fiscal year" means the time period from July 1 to June 30.

(4) "Fund" means the nursing facility assessment fund established pursuant to section 56-1504, Idaho Code.

(5) "Net patient service revenue" means gross revenues from services provided to nursing facility patients, less reductions from gross revenue resulting from an inability to collect payment of charges. Patient service revenue excludes nonpatient care revenues such as beauty and barber, vending income, interest and contributions, revenues from sale of meals and all outpatient revenues. Reductions from gross revenue includes: bad debts; contractual adjustments; uncompensated care; administrative, courtesy and policy discounts and adjustments; and other such revenue deductions.

(6) "Nursing facility" means a nursing facility as defined in section 39-1301 Idaho Code, and licensed pursuant to chapter 13, title 39, Idaho Code.

(7) "Resident day" means a calendar day of care provided to a nursing facility resident, including the day of admission and excluding the day of discharge, provided that one (1) resident day shall be deemed to exist when admission and discharge occur on the same day.

(8) "Medicare part A resident days" means those resident days funded by the medicare program or by a medicare advantage or special needs plan.

(9) "Upper payment limit" means the limitation established by federal regulations, 42 CFR 447.272, that disallows federal matching funds when state medicaid agencies pay certain classes of nursing facilities an aggregate amount for services that exceed the amount that is paid for the same services furnished by that class of nursing facilities under medicare payment principles.

History.

I.C., § 56-1503, as added by 2009, ch. 221,
§ 1, p. 687.

STATUTORY NOTES

Compiler's Notes.

For more on the center for medicare and medicaid services (CMS), see <http://www.cms.gov>.

56-1504. Nursing facility assessment fund. — (1) There is hereby created in the office of the state treasurer a dedicated fund to be known as the nursing facility assessment fund, hereinafter the "fund," to be administered by the department. The state treasurer shall invest idle moneys in the fund and any interest received on those investments shall be returned to the fund.

(2) Moneys in the fund shall consist of:

(a) All moneys collected or received by the department from nursing facility assessments required pursuant to this chapter;

(b) All federal matching funds received by the department as a result of expenditures made by the department that are attributable to moneys deposited in the fund;

(c) Any interest or penalties levied in conjunction with the administration of this chapter; and

(d) Any appropriations, federal funds, donations, gifts or moneys from any other sources.

(3) The fund is created for the purpose of receiving moneys in accordance with this section and section 56-1511, Idaho Code. Collected assessment funds shall be used to secure federal matching funds available through the state medicaid plan, which funds shall be used to make medicaid payments for nursing facility services that equal or exceed the amount of nursing facility medicaid rates, in the aggregate, as calculated in accordance with the approved state medicaid plan in effect on June 30, 2009. The fund shall be used exclusively for the following purposes:

(a) To pay administrative expenses incurred by the department or its agent in performing the activities authorized pursuant to this chapter, provided that such expenses shall not exceed a total of one percent (1%) of the aggregate assessment funds collected for the prior fiscal year.

(b) To reimburse the medicaid share of the assessment as a pass-through.

(c) To, at a minimum, make nursing facility adjustment payments that restore any rate reductions, in the aggregate, for the state fiscal years 2010 and 2011.

(d) To increase nursing facility payments to fund covered services to medicaid beneficiaries within medicare upper payment limits, as negotiated with the department.

(e) To repay the federal government any excess payments made to nursing facilities if the state plan, once approved by CMS, is subsequently disapproved for any reason, and after the state has appealed the findings. Nursing facilities shall refund the excess payments in question to the assessment fund. The state, in turn, shall return funds to both the federal government and nursing facility providers in the same proportion as the original financing. Individual nursing facilities shall be reimbursed based on the proportion of the individual nursing facility's assessment to the total assessment paid by nursing facilities. If a nursing facility is unable to refund payments, the state shall develop a payment plan and deduct moneys from future medicaid payments. The state will refund the federal government for the federal share of these overpayments.

(f) To make refunds to nursing facilities pursuant to section 56-1507, Idaho Code.

History.

I.C., § 56-1504, as added by 2011, ch. 164,
§ 23, p. 463.

STATUTORY NOTES**Cross References.**

State treasurer, § 67-1201 et seq.

Compiler's Notes.

For more on the center for medicare and medicaid services (CMS), see <http://www.cms.gov>.

Effective Dates.

Section 26 of S.L. 2011, ch. 164 provided that this section should take effect on and after July 1, 2012.

56-1505. Nursing facility assessments. — (1) Nursing facilities shall

pay the nursing facility assessment to the fund in accordance with the provisions of this chapter, with the exception of state and county-owned facilities, which are not required to contribute.

(2) The aggregated amount of assessments for all nursing facilities, during a fiscal year, shall be an amount not exceeding the maximum percentage allowed under federal law of the total aggregate net patient service revenue of assessed facilities from each provider's prior fiscal year. The department shall determine the assessment rate prospectively for the applicable fiscal year on a per-resident-day basis, exclusive of medicare part A resident days. The per-resident-day assessment rate shall be uniform. The department shall notify nursing facilities of the assessment rate applicable to the fiscal year by August 30 of that fiscal year.

(3) The department shall collect, and each nursing facility shall pay, the nursing facility assessment on an annual basis subject to the terms of this subsection. The nursing facility assessment shall be due annually with the initial payment due within sixty (60) days after the state plan has been approved by CMS. Subsequent annual payments are due no later than thirty (30) days after receipt of the department invoice.

(4) Nursing facilities may increase their charges to other payers to incorporate the assessment but shall not create a separate line item charge on the bill reflecting the assessment.

History.

I.C., § 56-1505, as added by 2011, ch. 164,
§ 23, p. 463.

STATUTORY NOTES**Compiler's Notes.**

For more on the center for medicare and medicaid services (CMS), see <http://www.cms.gov>.

Effective Dates.

Section 26 of S.L. 2011, ch. 164 provided that this section should take effect on and after July 1, 2012.

56-1506. Approval of state plan. — The department shall seek necessary federal approval in the form of the state plan amendments in order to implement the provisions of this chapter.

History.

I.C., § 56-1506, as added by 2009, ch. 221,
§ 1, p. 687.

56-1507. Multifacility locations. — If an entity conducts, operates or maintains more than one (1) nursing facility licensed by the department, the entity shall pay the nursing facility assessment for each nursing facility separately.

History.

I.C., § 56-1507, as added by 2009, ch. 221,
§ 1, p. 687.

56-1508. Termination of assessment. — (1) The nursing facility assessment shall terminate and the department shall discontinue the

imposition, assessment and collection of the nursing facility assessment if the plan amendment incorporating the payment in section 56-1504(3)(a) through (c), Idaho Code, is not approved by CMS. The payment calculations in section 56-1504(3)(b) and (c), Idaho Code, may be modified if necessary to obtain CMS approval of the plan amendment.

(2) Upon termination of the assessment, all collected assessment revenues, less any amounts expended by the department, shall be returned on a pro rata basis to nursing facilities that paid the nursing facility assessment.

History.

I.C., § 56-1508, as added by 2009, ch. 221,
§ 1, p. 687.

STATUTORY NOTES

Compiler's Notes.

For more on the center for medicare and

medicaid services (CMS), see <http://www.cms.gov>.

56-1509. Penalties for failure to pay assessment. — (1) If a nursing facility fails to pay the full amount of a nursing facility assessment when due, there shall be added to the assessment, unless waived by the department for reasonable cause, a penalty equal to five percent (5%) of the amount of the assessment that was not paid when due. Any subsequent payments shall be credited first to unpaid assessment amounts rather than to penalty or interest amounts, beginning with the most delinquent installment.

(2) In addition to the penalty identified in subsection (1) of this section, the department may seek any of the following remedies for failure of any nursing facility to pay its assessment when due:

- (a) Withhold any medical assistance reimbursement payments until such time as the assessment amount is paid in full;
- (b) Suspend or revoke the nursing facility license; or
- (c) Develop a plan that requires the nursing facility to pay any delinquent assessment in installments.

History.

I.C., § 56-1509, as added by 2009, ch. 221,
§ 1, p. 687.

56-1510. Rulemaking authority. — The department shall adopt rules to implement the provisions of this chapter.

History.

I.C., § 56-1510, as added by 2009, ch. 221,
§ 1, p. 687.

56-1511. Annual nursing facility adjustment payments. — (1) All nursing facilities, with the exception of the state and county-owned facilities, shall be eligible for annual nursing facility adjustments.

(2) For the purpose of this section, "nursing facility days" are days of

nursing facility services paid for by the Idaho medical assistance program for the applicable state fiscal year.

- (a) For state fiscal year 2010, medicaid days for each provider’s cost report ending in calendar year 2008 shall be utilized to determine the nursing facility adjustment payment.
- (b) For state fiscal year 2011, medicaid days for each provider’s cost report ending in calendar year 2009 shall be utilized to determine the nursing facility adjustment payment.
- (3) Adjustment payments shall be paid on an annual basis to reimburse covered medicaid expenditures in the aggregate within the upper payment limit.
- (4) Each annual payment shall be made no later than thirty (30) days after the receipt of the last annual deposit of the nursing facility assessments required in section 56-1504, Idaho Code.

History.
I.C., § 56-1511, as added by 2011, ch. 164,
§ 23, p. 463.

STATUTORY NOTES

Effective Dates.
Section 26 of S.L. 2011, ch. 164 provided

that this section should take effect on and
after July 1, 2012.

CHAPTER 16

IDAHO INTERMEDIATE CARE FACILITY
ASSESSMENT ACT

SECTION.	SECTION.
56-1601. Short title — Legislative intent.	56-1606. Multifacility locations.
56-1602. Definitions.	56-1607. Termination of ICF assessments.
56-1603. Intermediate care facility assess- ment fund.	56-1608. Penalties for failure to pay interme- diate care facility assessment.
56-1604. Intermediate care facility assess- ments.	56-1609. Annual intermediate care facility adjustment payments.
56-1605. Approval of state plan.	56-1610. Rulemaking authority.

56-1601. Short title — Legislative intent. — (1) This chapter shall be known and may be cited as the “Idaho Intermediate Care Facility Assessment Act.”

(2) It is the intent of the legislature to encourage the maximization of financial resources eligible and available for medicaid services by establishing a fund within the Idaho department of health and welfare to receive ICF assessments to be used in securing federal matching funds under federally prescribed programs available through the state medicaid plan.

History.
I.C., § 56-1601, as added by 2011, ch. 164,
§ 24, p. 463.

STATUTORY NOTES

Compiler's Notes.

Section 26 of S.L. 2011, ch. 164 provided: "The provisions of Section 24 of this act [enacting this section] shall be null, void and of no force and effect on and after July 1, 2012."

Section 2 of S.L. 2012, ch. 327 deleted that provision of section 24 of Chapter 164, Laws of 2011 that would have made chapter 16, title 56, Idaho Code, null and void on and after July 1, 2012.

56-1602. Definitions. — As used in this chapter:

- (1) "CMS" means the centers for medicare and medicaid services.
- (2) "Department" means the Idaho department of health and welfare.
- (3) "Fiscal year" means the time period from July 1 to June 30.
- (4) "Fund" means the ICF assessment fund established pursuant to section 56-1603, Idaho Code.
- (5) "ICF" means an intermediate care facility for people with intellectual disabilities as defined in section 39-1301, Idaho Code, and licensed pursuant to chapter 13, title 39, Idaho Code.
- (6) "Net patient service revenue" means gross revenues from services provided to ICF patients, less reductions from gross revenue resulting from an inability to collect payment of charges. Patient service revenue excludes nonpatient care revenues such as beauty and barber, vending income, interest and contributions, revenues from sale of meals and all outpatient revenues. Reductions from gross revenue includes: bad debts; contractual adjustments; uncompensated care; administrative, courtesy and policy discounts and adjustments; and other such revenue deductions.
- (7) "Resident day" means a calendar day of care provided to an ICF resident, including the day of admission and excluding the day of discharge, provided that one (1) resident day shall be deemed to exist when admission and discharge occur on the same day.
- (8) "Upper payment limit" means the limitation established in 42 CFR section 447.272, that disallows federal matching funds when state medicaid agencies pay certain classes of facilities an aggregate amount for services that exceed the amount that is paid for the same services furnished by that class of facilities under medicare payment principles.

History.

I.C., § 56-1602, as added by 2011, ch. 164, § 24, p. 463.

STATUTORY NOTES

Compiler's Notes.

Section 26 of S.L. 2011, ch. 164 provided: "The provisions of Section 24 of this act [enacting this section] shall be null, void and of no force and effect on and after July 1, 2012."

Section 2 of S.L. 2012, ch. 327 deleted that provision of section 24 of Chapter 164, Laws of 2011 that would have made chapter 16, title 56, Idaho Code, null and void on and after July 1, 2012.

56-1603. Intermediate care facility assessment fund. — (1) There is hereby created in the office of the state treasurer a dedicated fund to be known as the ICF assessment fund to be administered by the department. The state treasurer shall invest idle moneys in the fund, and any interest received on those investments shall be returned to the fund.

(2) Moneys in the fund shall consist of:

- (a) All moneys collected or received by the department from ICF assessments required pursuant to this chapter;
- (b) All federal matching funds received by the department as a result of expenditures made by the department that are attributable to moneys deposited in the fund;
- (c) Any interest or penalties levied in conjunction with the administration of this chapter; and
- (d) Any appropriation or federal funds.

(3) The fund is created for the purpose of receiving moneys in accordance with the provisions of this section and section 56-1604, Idaho Code. The fund shall not be used to replace any moneys appropriated to the Idaho medical assistance program by the legislature. Moneys in the fund, which are deemed to be perpetually appropriated, shall be used exclusively for the following purposes:

- (a) To pay administrative expenses incurred by the department or its agent in performing the activities authorized pursuant to this chapter, provided that such expenses shall not exceed a total of one percent (1%) of the aggregate assessment funds collected for the prior fiscal year.
- (b) To reimburse the medicaid share of the assessment as a pass-through.
- (c) To secure federal matching funds available through the state medicaid plan, which funds shall be used to make medicaid payments for ICF services that equal or exceed the amount of ICF medicaid rates, in the aggregate, as calculated in accordance with the approved state medicaid plan in effect on July 1, 2011.
- (d) To increase ICF payments to fund covered services to medicaid beneficiaries within medicare upper payment limits.
- (e) To make refunds to ICFs pursuant to section 56-1607, Idaho Code. If an ICF is unable to refund payments, the state shall develop a payment plan and deduct moneys from future medicaid payments. The state will refund the federal government for the federal share of these overpayments.
- (f) To make transfers to any other fund in the state treasury, provided such transfers shall not exceed the amount transferred previously from that other fund into the ICF assessment fund.

History.

I.C., § 56-1603, as added by 2011, ch. 164, § 24, p. 463; am. 2012, ch. 327, § 1, p. 908.

STATUTORY NOTES

Amendments.

The 2012 amendment, by ch. 327, deleted paragraphs (3)(e) and (3)(h), concerning ICF adjustment payments and funds for Medicaid trustee and benefit expenditures, and redesignated former paragraphs (f) and (g) as present paragraphs (e) and (f).

Compiler's Notes.

Section 26 of S.L. 2011, ch. 164 provided:

"The provisions of Section 24 of this act [enacting this section] shall be null, void and of no force and effect on and after July 1, 2012." Section 2 of S.L. 2012, ch. 327 deleted that provision of section 24 of Chapter 164, Laws of 2011 that would have made chapter 16, title 56, Idaho Code, null and void on and after July 1, 2012.

56-1604. Intermediate care facility assessments. — (1) The ICF shall pay the ICF assessment to the fund in accordance with the provisions of this chapter.

(2) The aggregated amount of assessments for all ICFs during a fiscal year shall be an amount not exceeding the maximum percentage allowed under federal law of the total aggregate net patient service revenue of assessed ICFs from each provider's prior fiscal year. The department shall determine the assessment rate prospectively for the applicable fiscal year on a per-resident-day basis. The per-resident-day assessment rate shall be uniform for all ICFs.

(3) The department shall collect, and each ICF shall pay, the ICF assessment on an annual basis subject to the terms of this subsection. The ICF assessment shall be due no later than thirty (30) days after the receipt of the department invoice.

History.

I.C., § 56-1604, as added by 2011, ch. 164,
§ 24, p. 463.

STATUTORY NOTES

Compiler's Notes.

Section 26 of S.L. 2011, ch. 164 provided:
"The provisions of Section 24 of this act [enacting this section] shall be null, void and of no force and effect on and after July 1, 2012."

Section 2 of S.L. 2012, ch. 327 deleted that provision of section 24 of Chapter 164, Laws of 2011 that would have made chapter 16, title 56, Idaho Code, null and void on and after July 1, 2012.

56-1605. Approval of state plan. — The department shall seek necessary federal approval in the form of the state plan amendments in order to implement the provisions of this chapter.

History.

I.C., § 56-1605, as added by 2011, ch. 164,
§ 24, p. 463.

STATUTORY NOTES

Compiler's Notes.

Section 26 of S.L. 2011, ch. 164 provided:
"The provisions of Section 24 of this act [enacting this section] shall be null, void and of no force and effect on and after July 1, 2012."

Section 2 of S.L. 2012, ch. 327 deleted that provision of section 24 of Chapter 164, Laws of 2011 that would have made chapter 16, title 56, Idaho Code, null and void on and after July 1, 2012.

56-1606. Multifacility locations. — If an entity conducts, operates or maintains more than one (1) ICF licensed by the department, the entity shall pay the assessment for each ICF separately.

History.

I.C., § 56-1606, as added by 2011, ch. 164,
§ 24, p. 463.

STATUTORY NOTES

Compiler's Notes.

Section 26 of S.L. 2011, ch. 164 provided: "The provisions of Section 24 of this act [enacting this section] shall be null, void and of no force and effect on and after July 1, 2012."

Section 2 of S.L. 2012, ch. 327 deleted that provision of section 24 of Chapter 164, Laws of 2011 that would have made chapter 16, title 56, Idaho Code, null and void on and after July 1, 2012.

56-1607. Termination of ICF assessments. — (1) The ICF assessment shall terminate and the department shall discontinue the imposition, assessment and collection of the ICF assessment if the plan amendment incorporating the payment in section 56-1604, Idaho Code, is not approved by CMS. In the event that CMS subsequently determines that the operation of this assessment program fails to abide by federal statute, regulation and/or CMS policy, the state shall return funds back to the providers on a pro rata basis of the assessments collected. The payment calculations in sections 56-1604 and 56-1609, Idaho Code, may be modified if necessary to obtain CMS approval of the plan amendment.

(2) Upon termination of the assessment, all collected assessment revenues, less any amounts expended by the department, shall be returned on a pro rata basis to ICFs that paid the ICF assessment.

History.

I.C., § 56-1607, as added by 2011, ch. 164, § 24, p. 463.

STATUTORY NOTES

Compiler's Notes.

Section 26 of S.L. 2011, ch. 164 provided: "The provisions of Section 24 of this act [enacting this section] shall be null, void and of no force and effect on and after July 1, 2012."

Section 2 of S.L. 2012, ch. 327 deleted that provision of section 24 of Chapter 164, Laws of 2011 that would have made chapter 16, title 56, Idaho Code, null and void on and after July 1, 2012.

56-1608. Penalties for failure to pay intermediate care facility assessment. — (1) If an ICF fails to pay the full amount of an ICF assessment when due, there shall be added to the assessment, unless waived by the department for reasonable cause, a penalty equal to five percent (5%) of the amount of the assessment that was not paid when due. Any subsequent payments shall be credited first to unpaid assessment amounts rather than to penalty or interest amounts, beginning with the most delinquent installment.

(2) In addition to the penalty identified in subsection (1) of this section, the department may seek any of the following remedies for failure of any ICF to pay its assessment when due:

- (a) Withhold any medical assistance reimbursement payments until such time as the assessment amount is paid in full;
- (b) Suspend or revoke the ICF license; or
- (c) Develop a plan that requires the ICF to pay any delinquent assessment in installments.

History.

I.C., § 56-1608, as added by 2011, ch. 164,
§ 24, p. 463.

STATUTORY NOTES**Compiler's Notes.**

Section 26 of S.L. 2011, ch. 164 provided:
"The provisions of Section 24 of this act [en-
acting this section] shall be null, void and of
no force and effect on and after July 1, 2012."

Section 2 of S.L. 2012, ch. 327 deleted that
provision of section 24 of Chapter 164, Laws
of 2011 that would have made chapter 16,
title 56, Idaho Code, null and void on and
after July 1, 2012.

**56-1609. Annual intermediate care facility adjustment pay-
ments.** — (1) All ICFs shall be eligible for annual ICF adjustments.

(2) For the purpose of this section, "medicaid days" are days of ICF
services paid for by the Idaho medical assistance program for the applicable
state fiscal year.

(a) For state fiscal year 2011, medicaid days for each provider's cost
report ending in calendar year 2009 shall be utilized to determine the ICF
adjustment payment.

(b) For state fiscal year 2012, medicaid days for each provider's cost
report ending in calendar year 2010 shall be utilized to determine the ICF
adjustment payment.

(c) Adjustment payments for a new provider, not new ownership, without
a full year cost report shall be determined using medicaid patient day
information from the full calendar quarter of business prior to the rate
adjustment quarter.

(3) Adjustment payments shall be paid on an annual basis to reimburse
covered medicaid expenditures in the aggregate within the upper payment
limit.

(4) If a provider does not pay its annual assessment within thirty (30)
days after receipt of the department invoice, no further rate adjustment
payments shall be made to the provider until receipt of all assessments in
arrears. If a provider pays its annual assessment more than sixty (60) days
after receiving the department invoice, the subsequent adjustment payment
shall be reduced twenty percent (20%).

History.

I.C., § 56-1609, as added by 2011, ch. 164,
§ 24, p. 463.

STATUTORY NOTES**Compiler's Notes.**

Section 26 of S.L. 2011, ch. 164 provided:
"The provisions of Section 24 of this act [en-
acting this section] shall be null, void and of
no force and effect on and after July 1, 2012."

Section 2 of S.L. 2012, ch. 327 deleted that
provision of section 24 of Chapter 164, Laws
of 2011 that would have made chapter 16,
title 56, Idaho Code, null and void on and
after July 1, 2012.

56-1610. Rulemaking authority. — The department shall adopt rules
to implement the provisions of this chapter.

History.

I.C., § 56-1610, as added by 2011, ch. 164,
§ 24, p. 463.

STATUTORY NOTES**Compiler's Notes.**

Section 26 of S.L. 2011, ch. 164 provided:
"The provisions of Section 24 of this act [en-
acting this section] shall be null, void and of
no force and effect on and after July 1, 2012."

Section 2 of S.L. 2012, ch. 327 deleted that
provision of section 24 of Chapter 164, Laws
of 2011 that would have made chapter 16,
title 56, Idaho Code, null and void on and
after July 1, 2012.

TITLE 57

PUBLIC FUNDS IN GENERAL

CHAPTER.

1. PUBLIC DEPOSITORY LAW, §§ 57-101 — 57-145.
2. MUNICIPAL BOND LAW, §§ 57-201 — 57-234.
3. FILING OF LISTS OF BONDS, §§ 57-301 — 57-306.
4. REGISTRATION OF COUPON BONDS, §§ 57-401 — 57-404.
5. ISSUANCE OF REFUNDING BONDS, §§ 57-501 — 57-504.
6. SINKING FUNDS — MISCELLANEOUS PROVISIONS, §§ 57-601 — 57-604.
7. INVESTMENT OF PERMANENT ENDOWMENT AND EARNINGS RESERVE FUNDS, §§ 57-701 — 57-728.
8. FUNDS CONSOLIDATION ACT, §§ 57-801 — 57-824.
9. PUBLIC OBLIGATIONS REGISTRATION ACT, §§ 57-901 — 57-914.
10. STATE LAND WATER MAINTENANCE AND ASSESSMENT FUND. [REPEALED.]

CHAPTER.

11. PERMANENT BUILDING FUND, §§ 57-1101 — 57-1113.
12. TAYLOR GRAZING ACT FUNDS, §§ 57-1201 — 57-1205.
13. FOREST RESERVE AND MINING IMPACT FUNDS, §§ 57-1301 — 57-1307.
14. RURAL REHABILITATION FUNDS, §§ 57-1401 — 57-1406.
15. WATERWAYS IMPROVEMENT FUND, §§ 57-1501 — 57-1503.
16. GOVERNOR'S EMERGENCY FUND, § 57-1601.
17. CENTRAL CANCER REGISTRY FUND, §§ 57-1701 — 57-1707.
18. PARK AND RECREATION CAPITAL IMPROVEMENT ACCOUNT, § 57-1801.
19. OFF-ROAD MOTOR VEHICLE FUND, § 57-1901.
20. TRAUMA REGISTRY, §§ 57-2001 — 57-2007.

CHAPTER 1

PUBLIC DEPOSITORY LAW

SECTION.

- 57-101. Name of act.
- 57-102. Scope of act.
- 57-103. Definitions.
- 57-104. Depositing unit.
- 57-105. Public moneys.
- 57-106. Supervising board.
- 57-107. Treasurer.
- 57-108. Auditor.
- 57-109. Depositing unit in two or more counties — Designation of auditor.
- 57-110. Designated depository.
- 57-111. Financial institutions eligible as depositories — Certain funds of irrigation districts under section 43-118, Idaho Code.
- 57-111A. Treasurer of depositing unit shall not deposit money in any bank or trust company which has failed to pay all state and local taxes.
- 57-112. Banks to which officials secretly indebted ineligible. [Repealed.]
- 57-113. Report on capital and surplus.
- 57-114 — 57-126. [Repealed.]
- 57-127. Deposit of public funds — Duties of treasurer and supervising board.
- 57-127A. Deposit for safekeeping — Responsibility.

SECTION.

- 57-128. Designation of depository.
- 57-129. Maximum amount of deposit proportioned to holdings. [Repealed.]
- 57-130. Deposit in financial institutions outside of depositing unit.
- 57-131. Deposits subject to payment on demand.
- 57-132. Deposits by tax collector and public administrator.
- 57-133. Demand deposits — Payment of service charges — Interest on time deposits.
- 57-133A. Failure of public depositories to maintain standards. [Repealed.]
- 57-133B. Unlawful disclosure of information relating to designated depositories — Penalty.
- 57-134. Accounting for moneys deposited.
- 57-135. Treasurer's monthly report.
- 57-136. Duty of treasurer upon receipt of notice of withdrawal. [Repealed.]
- 57-137. Responsibility for loss through insolvency of bank.
- 57-138. Liability of county auditor under public depository law.
- 57-139. Offenses by treasurer — Penalty.
- 57-140. Neglect of treasurer — Penalty.

SECTION.

- 57-141. Bribery of treasurer a felony — Penalty.
 57-142. Expenses — Audit and payment.
 57-143. Inspection of treasurer's office.
 57-144. Inspection of auditor's office.
 57-145. Deposit of funds by county officers

other than treasurer pending deposit with treasurer — Manner of depositing — Duties and liabilities of officer and receiving depositories.

57-101. Name of act. — This chapter may be cited as the "Public Depository Law."

History.

1921, ch. 256, § 1, p. 557; I.C.A., § 55-101.

STATUTORY NOTES**Cross References.**

Deposit of hospital funds, § 31-3707.
 Facsimile signature of public officials, use in public securities, §§ 59-1018 to 59-1022.
 Joint city and county hospital funds, § 31-3709.
 Library districts, deposits in accordance with public depository law, § 33-2722.

School bond proceeds, § 33-1112.
 School district bonds, redemption when sold to state, § 33-1119.
 School funds, §§ 33-901 to 33-904; apportionment, §§ 33-1009 to 33-1013.
 State depository law, §§ 67-2725 to 67-2749.

JUDICIAL DECISIONS

ANALYSIS

Application.
 Constitutionality.
 Irrigation district.
 Preference not allowable.
 Purpose and construction.
 Rate of interest.
 School funds.

Application.

Investment of public funds must be made as limited by this statute even though interest so earned is less than what might be earned by more speculative investments. *Oversmith v. Highway Dist. No. 2*, 37 Idaho 752, 218 P. 361 (1923).

Bond drafted in accordance with provisions of § 57-119 (since repealed) covered time deposits of school district outstanding at time of execution of bond, moneys transferred from checking account in bank to time deposit in savings account while bond was in force, and time certificate issued when bond was in force in renewal of prior time certificate. *Independent Sch. Dist. No. 22 v. Weiser Nat'l Bank*, 45 Idaho 554, 263 P. 997 (1928).

The 1921 act did not provide for the deposit by the treasurer as ex officio public administrator of funds in his hands as public administrator. *Kiernan v. Cleland*, 47 Idaho 200, 273 P. 938 (1929) (their held entitled to interest on such deposit).

Constitutionality.

Public depository law and statute authoriz-

ing general deposits of public moneys, consisting of this and cognate sections, is constitutional. *Bannock County v. Citizens' Bank & Trust Co.*, 53 Idaho 159, 22 P.2d 674 (1933); *Aetna Cas. & Sur. Co. v. Wedgwood*, 57 Idaho 682, 69 P.2d 128 (1937).

Irrigation District.

Provisions of county depository law did not apply to deposit of irrigation district funds by its treasurer. *In re Bank of Nampa, Ltd.*, 29 Idaho 166, 157 P. 1117 (1916); *Drainage Dist. No. 2 v. Ada County*, 38 Idaho 778, 226 P. 290 (1924).

Preference Not Allowable.

School district is not entitled to preference of its claim against closed bank's assets for amount of unpaid cashier's check, received for district's check on its unsecured sinking fund deposit and sent to state finance commissioner (now director of the department of finance) in payment of district's indebtedness to state department of public investments (now department of finance), in absence of

showing that bank acted only as district's agent in transmitting funds. *Independent Sch. Dist. No. 1 v. Diefendorf*, 57 Idaho 191, 64 P.2d 393 (1937).

Purpose and Construction.

This statute was enacted for express purpose of safeguarding and protecting funds of political subdivisions and municipal and quasi-municipal corporations of state. *Oversmith v. Highway Dist. No. 2*, 37 Idaho 752, 218 P. 361 (1923); *Washington County v. Weiser Nat'l Bank*, 43 Idaho 600, 255 P. 310 (1927).

This statute is complete within itself and is limitation upon power of public boards and officers in matter of investment of public moneys, and, in order that valid deposit shall be made, it must be strictly complied with. *Oversmith v. Highway Dist. No. 2*, 37 Idaho 752, 218 P. 361 (1923).

Rate of Interest.

Where a statute fixed interest on state and public funds payable by depositories as the

average of interest rates on daily bank balances in clearinghouses at Salt Lake City, Utah, and Portland, Oregon, on certain dates, but, because prohibited by federal statute, there was no interest rate on such balances, except on other banks' deposits requiring thirty one days' and sixty days' notice of withdrawal, respectively, average of such interest rates is the rate payable under statutes. *First Sec. Bank v. Enking*, 54 Idaho 735, 35 P.2d 266 (1934).

School Funds.

Evidence was insufficient to show that a former school district treasurer, who was cashier of bank in which school funds were deposited, appropriated school funds, or that money was not in the bank at the time of the district's action against treasurer and his surety. *Independent Sch. Dist. No. 6 v. Craven*, 54 Idaho 158, 29 P.2d 753 (1934).

Cited in: *Roddy v. State*, 65 Idaho 137, 139 P.2d 1005 (1943).

RESEARCH REFERENCES

Am. Jur. — 63C Am. Jur. 2d, Public Funds, §§ 8-35.

C.J.S. — 26B C.J.S., Depositories, § 43 et seq.

57-102. Scope of act. — This chapter is designed to safeguard and protect the funds of all political subdivisions and of all municipal and quasi-municipal corporations of the state, having power to levy taxes or assessments, now existing or hereafter created and whether organized under the general laws or any special law of the state.

History.

1921, ch. 256, § 2, p. 557; I.C.A., § 55-102.

57-103. Definitions. — In this chapter, unless the context otherwise requires, words and phrases shall have the meanings defined in the sections following.

History.

1921, ch. 256, § 3, p. 557; I.C.A., § 55-103.

JUDICIAL DECISIONS

ANALYSIS

Pledge of assets by national bank.

Receiver may recover pledged assets of bank.

Pledge of Assets by National Bank.

As respects the right of a national bank to pledge assets securing deposits of a clerk of a state court, public policy of the state opposes

the pledging of bank assets as security for deposits, except where specifically authorized by law. *Eckerson v. Utter*, 7 F. Supp. 201 (D. Idaho 1934), *aff'd*, 78 F.2d 307 (9th Cir. 1935).

Receiver May Recover Pledged Assets of Bank.

A receiver of an insolvent national bank is entitled to recover bonds pledged to secure state court clerk's deposits consisting of liti-

gants' awards, except such amount of the bonds as was given to secure costs and fees which were "public funds" of the county. *Eckerson v. Utter*, 7 F. Supp. 201 (D. Idaho 1934), *aff'd*, 78 F.2d 307 (9th Cir. 1935).

57-104. Depositing unit. — Every municipal and quasi-municipal corporation, recreation district, improvement district, school district, or governmental unit, of every kind, character or class, now or hereafter created or organized, and authorized by law to levy taxes or special assessments, for which the county treasurer does not act as treasurer, and every county, is a depositing unit: provided, that as to any such depositing unit as herein defined the moneys of which may at any time be in the custody, charge or possession of any county treasurer or tax collector, the county shall be deemed to be the depositing unit with respect to such moneys while the same so remain in such custody, charge or possession, and also of all moneys in the custody, charge or possession of any county treasurer or tax collector for the credit of any school district or other political subdivision of a county authorized by law to levy taxes or special assessments and not herein defined as a "depositing unit."

The board of control or other agency created by or as a result of contracts entered into under the authority of federal and state statutes pursuant to which such board or other agency acts as the operating agent for one or more irrigation districts within the state of Idaho, including the board of control of the Boise Project as created by the respective contracts entered into by and between the United States and the New York irrigation district, Nampa & Meridian irrigation district, Boise-Kuna irrigation district, Wilder irrigation district, in the state of Idaho, and the Big Bend irrigation district in the state of Oregon, under the provisions of the Act of Congress of June 17, 1902 (32 Stat. 388) and acts amendatory thereof or supplemental thereto, and particularly under the provisions of section 4 of the Act of Congress of December 5, 1924, (43 Stat. 672, 701, now sections 500 and 501 of chapter 12, title 43 of the United States Code Annotated) [43 U.S.C. §§ 500, 501], all generally referred to as the Reclamation Law, shall also be deemed to be a depositing unit within the meaning and for the purposes of this chapter, (being the public depository law) with boundaries coinciding with those of the irrigation districts in this state for which said board of control, or other agency, now or hereafter acts as operating agent, and as such shall also be deemed to be located in all counties in the state in which all or any part of such irrigation district or districts are located, and all moneys coming into the possession of such board of control, or such other agency, are public moneys and may be deposited in bank, under the provisions of this chapter, in the name of such board, or other agency.

History.

1921, ch. 256, § 4, p. 557; am. 1925, ch. 45, § 1, p. 63; I.C.A., § 55-104; am. 1937, ch. 35,

§ 1, p. 46; am. 1939, ch. 42, § 1, p. 84; am. 1969, ch. 142, § 1, p. 448; am. 1974, ch. 15, § 2, p. 302.

STATUTORY NOTES

Cross References.

School districts, § 33-509.

Federal References.

The Reclamation Law, referred to in the second paragraph, is compiled as 43 U.S.C.S. § 371 et seq.

Compiler's Notes.

For more on the board of control of the Boise Project, see <http://www.boiseproject.org>.

For more on the Nampa & Meridian irrigation district, see <http://www.nmid.org>.

The words enclosed in parentheses so appeared in the law as enacted.

Effective Dates.

Section 2 of S.L. 1937, ch. 35 declared an emergency. Approved February 17, 1937.

Section 3 of S.L. 1939, ch. 42 declared an emergency. Approved February 10, 1939.

JUDICIAL DECISIONS

Interest on Estate Funds.

Heir was entitled to interest on funds of estate deposited by public administrator, who

was also county treasurer, to account of county treasurer. *Kiernan v. Cleland*, 47 Idaho 200, 273 P. 938 (1929).

57-105. Public moneys. — “Public moneys” are all moneys coming into the hands of any treasurer of a depositing unit, and in the case of any county shall also include all moneys coming into the hands of its tax collector or public administrator.

History.

1921, ch. 256, § 4a, as added by 1925, ch. 45, § 2, p. 63; I.C.A., § 55-105.

JUDICIAL DECISIONS

ANALYSIS

Construction.

Deposit of public money.

Construction.

This section defines public moneys not as moneys belonging to the depositing unit, but as “coming into hands of” the county, thus recognizing ownership as to some of funds in others than county. *Kiernan v. Cleland*, 47 Idaho 200, 273 P. 938 (1929).

Definition in this section has reference to public moneys coming into hands of treasurer of a depositing unit or, in the case of a county, money coming into the hands of its tax collector or public administrator, and relates only to officers named in respect of their duty in

safeguarding and protecting the funds of political subdivisions received by them. *White v. Pioneer Bank & Trust Co.*, 50 Idaho 589, 298 P. 933 (1931).

Deposit of Public Money.

Deposit of public money, by one authorized so to do, without security required by law, is classed as “general deposit” and not a “trust fund” in the event of insolvency. *Murphy v. Lumbermens State Bank & Trust Co.*, 57 Idaho 311, 65 P.2d 154 (1937) (decision prior to repeal of §§ 57-113 to 57-126).

DECISIONS UNDER PRIOR LAW

Irrigation Funds.

Irrigation district funds deposited with, and classed as general funds by, a bank were a special deposit, irrespective of the fact that

the treasurer furnished a surety bond guaranteeing the faithful performance of his official duties. In re *Bank of Nampa, Ltd.*, 29 Idaho 166, 157 P. 1117 (1916).

OPINIONS OF ATTORNEY GENERAL

The watermaster of Water District 1 should not have custody of the funds of Water District 1 and, assuming Water District 1 has elected to follow § 42-619, a district treasurer should be elected to have custody of Water District 1 funds and to make disbursements

from these funds. The district treasurer is prohibited by the provisions of the public depository law from investing any district funds in common stocks, corporate bonds, mutual funds and other types of equity securities. OAG 91-7.

57-106. Supervising board. — “Supervising board” is the official governing body of a depositing unit.

History.

1921, ch. 256, § 5, p. 557; I.C.A., § 55-106.

JUDICIAL DECISIONS

Cited in: *Oversmith v. Highway Dist.* No. 2, 37 Idaho 752, 218 P. 361 (1923).

57-107. Treasurer. — “Treasurer” is the official custodian of public moneys as defined in this chapter.

History.

1921, ch. 256, § 6, p. 557; am. 1925, ch. 45, § 3, p. 63; I.C.A., § 55-107.

JUDICIAL DECISIONS

Cited in: *Kiernan v. Cleland*, 47 Idaho 200, 273 P. 938 (1929).

57-108. Auditor. — “Auditor” is the officer of a depositing unit charged by law or by ordinance or resolution of the supervising board with the duty of checking the accounts of the treasurer.

History.

1921, ch. 256, § 7, p. 557; I.C.A., § 55-108.

57-109. Depositing unit in two or more counties — Designation of auditor. — If any depositing unit as defined in this chapter, or any part thereof, is located or deemed to be located in two (2) or more counties of the state, then the county auditor of whichever one of such counties as is from time to time designated by the supervising board of such depositing unit, and he alone, shall have, exercise and be vested with all the rights, powers and duties with respect to such depositing unit and the whole thereof, as a county auditor has or exercises under the provisions of this chapter with respect to depositing units located entirely in his own county.

History.

I.C.A., § 55-108-A, as added by 1939, ch. 41, § 1, p. 83.

STATUTORY NOTES

Effective Dates.

Section 2 of S.L. 1939, ch. 41 declared an emergency. Approved February 10, 1939.

57-110. Designated depository. — “Designated depository” is any national bank, state bank, trust company, federal savings and loan association, state savings and loan association, federal credit union or state credit union, located in the state and designated as a depository by the supervising board.

History.

1921, ch. 256, § 8, p. 557; I.C.A., § 55-109; am. 1935, ch. 134, § 1, p. 320; am. 1986, ch. 74, § 4, p. 220.

JUDICIAL DECISIONS

Cited in: *Oversmith v. Highway Dist. No. 2*, 37 Idaho 752, 218 P. 361 (1923).

57-111. Financial institutions eligible as depositories — Certain funds of irrigation districts under section 43-118, Idaho Code. — Any national bank, state bank, trust company, federal savings and loan association, state savings and loan association, federal credit union or state credit union, located within the geographical boundaries of any depositing unit, may become a depository of the public funds of such depositing unit by making application therefor to its supervising board and may under the provisions of section 57-130, Idaho Code, become the depository of other depositing units within the state.

Provided, that moneys which have been or shall be hereafter derived by irrigation districts organized under and by virtue of the provisions of section 43-118, Idaho Code, from the sale of coupon bonds for the payment of interest on bonds outstanding as provided by chapter 5, title 43, Idaho Code, may be deposited in a depository designated within the state of Idaho as provided by this chapter, or in such other depository within or without the state of Idaho as shall be designated by resolution of the board of directors of the irrigation district, and upon such terms and conditions as shall be agreed upon by the directors of the irrigation district and the purchasers of the outstanding bonds: provided, however, that the funds available as aforesaid shall in no manner be dissipated or used for any purpose other than the payment of interest on outstanding bonds.

History.

1921, ch. 256, § 9, p. 557; am. 1925, ch. 81, § 1, p. 115; I.C.A., § 55-110; am. 1935, ch. 134, § 2, p. 320; am. 1969, ch. 142, § 2, p. 448; am. 1986, ch. 74, § 5, p. 220.

JUDICIAL DECISIONS

Novation.

Compliance with provisions of this law is necessary to entitle bank to claim on theory of novation, where original deposit was taken

over by absorption of first bank by new institution. *Independent Sch. Dist. v. Porter*, 39 Idaho 340, 228 P. 253 (1924).

RESEARCH REFERENCES

Am. Jur. — 63C Am. Jur. 2d, Public Funds, §§ 8 to 12.

C.J.S. — 26B C.J.S., Depositaries, §§ 59 to 66.

57-111A. Treasurer of depositing unit shall not deposit money in any bank or trust company which has failed to pay all state and local taxes. — The treasurer of a depositing unit shall not deposit moneys of a depositing unit in a financial institution which has failed to pay all state and local taxes it owes, including corporate income or franchise taxes upon its corporate income or franchise, sales and use taxes upon its purchases of tangible personal property, and real and personal property taxes upon property owned or leased by such financial institution.

History.

I.C., § 57-111A, as added by 1969, ch. 141, § 1, p. 447; am. 1986, ch. 74, § 6, p. 220.

STATUTORY NOTES

Effective Dates.

Section 3 of S.L. 1969, ch. 141, provided

that the act should take effect on and after January 1, 1970.

57-112. Banks to which officials secretly indebted ineligible. [Repealed.]

STATUTORY NOTES

Compiler's Notes.

This section, which comprised 1921, ch. 256, § 10, p. 557; I.C.A., § 55-111; am. 1986, ch. 74, § 7, p. 220, was repealed by S.L. 1990, ch. 196, § 1, effective July 1, 1990 and S.L. 1991, ch. 25, § 1, effective July 1, 1991.

The amendment of this section by § 85 of S.L. 1990, ch. 213, effective July 1, 1993 was also repealed by § 1 of S.L. 1991, ch. 25, effective July 1, 1991.

57-113. Report on capital and surplus. — Every financial institution designated as a public depository and holding any deposit of public funds of any depositing unit under the provisions of this chapter shall, on or before beginning to hold such deposits, file with the treasurer and the supervising board of each such depositing unit whose deposit it so holds, the affidavit of one (1) of its officers showing the amount of the capital stock and surplus or reserves and unallocated or undivided earnings, as applicable, of such institution. In the event that such institution has such an affidavit on file with the treasurer and supervising board of each relevant depositing unit on the effective date of this section, such affidavit or affidavits shall satisfy the requirement of this section until January 31 of the year next following the effective date of this act. Such affidavits shall be effective for the purposes of this section to and including January 31 next following the date of their filing, but no longer, and, on or before that date, if such institution is to continue as a designated public depository under this chapter, a like affidavit shall be filed in like manner for the succeeding year on or before the date specified by the state treasurer pursuant to section 67-2739(2), Idaho

Code. No such institution shall receive deposits from nor act as depository for the public funds of any depositing unit unless and until an affidavit as is herein required and which still continues in effect is on file with the treasurer and the supervising board of such depositing unit in accordance with this section.

History.

I.C., § 57-113, as added by 1983, ch. 38, § 2, p. 89; am. 1986, ch. 74, § 8, p. 220; am. 2012, ch. 51, § 1, p. 147.

STATUTORY NOTES

Cross References.

State treasurer, § 67-1201 et seq.

“on or before the date specified by the state treasurer pursuant to section 67-2739(2), Idaho Code” at the end of the third sentence.

Prior Laws.

Former § 57-113, which comprised S.L. 1921, ch. 256, § 11, p. 557; 1927, ch. 154, § 1, p. 200; 1929, ch. 193, § 1, p. 357; 1931, ch. 72, § 1, p. 125; I.C.A., § 55-112; 1935, ch. 31, § 1, p. 54, was repealed by S.L. 1969, ch. 142, § 12, p. 448.

Compiler's Notes.

The phrases “the effective date of this section” and “the effective date of this act” in the second sentence refer to the effective date of S.L. 1983, ch. 38, which was July 1, 1983.

Amendments.

The 2012 amendment, by ch. 51, inserted

57-114 — 57-126. Security for deposits and bonds. [Repealed.]

STATUTORY NOTES

Compiler's Notes.

These sections, comprising S.L. 1921, ch. 256, §§ 12 to 23, p. 587; 1925, ch. 45, §§ 4 to 9, p. 63; 1927, ch. 154, §§ 2 to 9, p. 200; 1929, ch. 193, §§ 2 and 3, p. 357; 1931, ch. 72, §§ 1 to 3, p. 125; I.C.A., §§ 55-113 to 55-125; 1933,

ch. 90, § 1, p. 142; 1935, ch. 31, § 2, p. 54; 1935, ch. 120, § 1, p. 283; 1941, ch. 50, § 1, p. 106; 1955, ch. 85, § 1, p. 185; 1963, ch. 100, § 1, p. 318, were repealed by S.L. 1969, ch. 142, § 12, p. 448.

57-127. Deposit of public funds — Duties of treasurer and supervising board. — Except where the public moneys of a depositing unit in the custody of the treasurer at any one (1) time are less than one thousand dollars (\$1000), the treasurer shall deposit, and at all times keep on deposit, subject to the provisions of this law, in designated depositories, all public moneys coming into his hands, and it is hereby made the duty of said supervising board not less than once every six (6) months to certify to the treasurer the capital and surplus or reserves and unallocated or undivided earnings, as applicable, of each public depository, a copy of which certificate shall immediately be served on the treasurer by the supervising board or its clerk; provided, that with the approval of the supervising board of the depositing unit, the treasurer is authorized and empowered to invest surplus or idle funds of the depositing unit in investments permitted by section 67-1210, Idaho Code, and interest received on all such investments, unless otherwise required by law, shall be paid into the general fund of the depositing unit: and provided further, that as to all public moneys in the custody of the treasurer of a depositing unit for which there is no legal depository available under this chapter, it shall be the duty of the supervising board of the depositing unit to designate and place for the safekeeping

of such public moneys, and until such designation it shall be the duty of the treasurer to deposit such excess sums on special deposit in any public depository, and the expense of such service shall be borne by the depositing unit.

History.

1921, ch. 256, § 24, p. 557; am. 1925, ch. 45, § 10, p. 63; am. 1927, ch. 154, § 10, p. 154; I.C.A., § 55-126; am. 1935, ch. 134, § 4, p.

320; am. 1961, ch. 148, § 1, p. 213; am. 1969, ch. 142, § 3, p. 448; am. 1981, ch. 15, § 1, p. 26; am. 1986, ch. 74, § 9, p. 220.

STATUTORY NOTES

Compiler's Notes.

The term "this law" near the beginning of this section refers to S.L. 1921, ch. 256, which is compiled as §§ 57-101 to 57-108, 57-110, 57-111, 57-127, 57-130 to 57-133, 57-134, 57-135, and 57-137 to 57-144. The reference

probably should be to "this chapter," being chapter 1, title 57, Idaho Code.

Effective Dates.

Section 2 of S.L. 1961, ch. 148 declared an emergency. Approved March 11, 1961.

JUDICIAL DECISIONS

ANALYSIS

Failure of depository.

Failure to deposit.

Recovery of deposit.

Right to interest.

Special deposits.

Failure of Depository.

Where county public moneys are placed on general deposit in compliance with the depository law and the depository fails, such county funds are entitled to be classed as "debts due depositors." *Bannock County v. Citizens' Bank & Trust Co.*, 53 Idaho 159, 22 P.2d 674 (1933); *Aetna Cas. & Sur. Co. v. Wedgwood*, 57 Idaho 682, 69 P.2d 128 (1937).

Failure to Deposit.

Failure of official with custody of public funds available for deposit, after persistent effort, to find a bank which would give a bond for the deposit thereof or pay interest on the daily balances, because of the smallness of the amount of such funds, will not afford a basis for summary proceeding for his removal. *Sharp v. Brown*, 38 Idaho 136, 221 P. 139 (1923) (decision prior to repeal of §§ 57-113 to 57-126).

Recovery of Deposit.

Where city funds were unlawfully deposited

in bank, the city or those claiming under it could recover the amount of deposit as a trust fund in bank receiver's hands. *American Sur. Co. v. Jackson*, 24 F.2d 768 (9th Cir. 1928).

Right to Interest.

Heir was entitled to interest on funds of estate deposited by public administrator, who was county treasurer, to his account as county treasurer. *Kiernan v. Cleland*, 47 Idaho 200, 273 P. 938 (1929).

Special Deposits.

This section covers all public moneys of the depositing unit and, thus, authorizes a special deposit of any special funds including those received by county treasurer as tax collector. *Adams County v. First Bank of Council*, 47 Idaho 89, 272 P. 699 (1928).

Cited in: *Washington County v. Weiser Nat'l Bank*, 43 Idaho 600, 255 P. 310 (1927); *Chicago, M. & St. P. Ry. v. Public Utils. Comm'n*, 47 Idaho 346, 275 P. 780 (1929).

RESEARCH REFERENCES

Am. Jur. — 63C Am. Jur. 2d, Public Officers and Employees, §§ 263, 345 to 348.

C.J.S. — 26B C.J.S., Depositaries, §§ 50 to 53.

57-127A. Deposit for safekeeping — Responsibility. — The treasurer may deposit for safekeeping with a designated depository or a federal

reserve bank any bonds, notes, bills, debentures, obligations, or certificates of indebtedness in which the moneys of the taxing unit or its agencies are invested pursuant to law; provided the treasurer shall take from the designated depository a receipt for the securities deposited. A treasurer may accept securities in authorized book entry form. The treasurer shall not be responsible for securities so deposited until they are withdrawn by the treasurer from the designated depository, except insofar as a violation by the treasurer of the prudent man investment rule contributes to any loss.

History. § 1, p. 1366; am. 1983, ch. 38, § 3, p. 89; am. I.C., § 57-127A, as added by 1974, ch. 148, 1986, ch. 74, § 10, p. 220.

STATUTORY NOTES

Effective Dates.

Section 2 of S.L. 1974, ch. 148 declared an emergency. Approved March 29, 1974.

JUDICIAL DECISIONS

Duties of Treasurer.

County treasurer could not withdraw deposited sums except for the payment of warrants legally drawn, or for the purpose of depositing the same according to law in other

banks likewise qualified, and an attempted withdrawal of such funds by him in any other manner had no legal effect. *Blaine County v. Fuld*, 31 Idaho 358, 171 P. 1138 (1918).

RESEARCH REFERENCES

C.J.S. — 26B C.J.S., Depositories, § 97 et seq.

57-128. Designation of depository. — The supervising board shall designate one or more financial institutions within the boundaries of the depositing unit which are qualified public depositories as defined by section 57-110, Idaho Code, and which is in compliance with section 57-113, Idaho Code, as depository or depositories for the moneys required to be kept by the treasurer. Such designation shall be determined by competitive bidding or by other means generally accepted as standard business practice. In no case shall the deposit or deposits of public funds of any depositing unit in any public depository, exceed at any one (1) time in the aggregate the total of the capital and surplus or reserves and unallocated or undivided earnings, as applicable, of such public depository. In the event that any financial institution has been designated as a depository under this chapter, such designation shall continue in force until revoked by the supervising board of the depositing unit.

History.

I.C., § 57-128, as added by 1983, ch. 38, § 5, p. 89; am. 1986, ch. 74, § 11, p. 220.

STATUTORY NOTES

Prior Laws.

Former § 57-128, which comprised 1921, ch. 256, § 25, p. 557; am. 1929, ch. 193, § 4, p. 357; I.C.A., § 55-127; am. 1935, ch. 134, § 3,

p. 320; am. 1969, ch. 142, § 4, p. 448; 1972, ch. 181, § 2, p. 460, was repealed by S.L. 1983, ch. 38, § 4.

RESEARCH REFERENCES

Am. Jur. — 63C Am. Jur. 2d, Public Funds, §§ 11, 12.

57-129. Maximum amount of deposit proportioned to holdings. [Repealed.]

STATUTORY NOTES

Compiler's Notes.

This section, comprising S.L. 1921, ch. 256, § 26, p. 557; 1927, ch. 154, § 11, p. 200; I.C.A., § 55-128; 1935, ch. 31, § 3, p. 54,

regarding maximum amount deposited in a designated depository, was repealed by S.L. 1969, ch. 142, § 12, p. 488.

57-130. Deposit in financial institutions outside of depositing unit. — Where there are no approved depositories in the depositing unit, or where the money in the treasury exceeds the amount which the designated depositories in the depositing unit are willing to accept, the said excess moneys may be deposited in financial institutions outside of the depositing unit, but within the state of Idaho, which may be designated by the supervising board under the same conditions and subject to the same requirements as if in the depositing unit, and where the money in the treasury exceeds the amount which all designated depositories in the state are willing to accept, such excess may in that event and not otherwise, be deposited in banks outside the state, which banks shall be designated by the supervising board under the same conditions and subject to the same requirements as for designated depositories in the depositing unit.

History.

1921, ch. 256, § 27, p. 557; am. 1929, ch. 193, § 5, p. 357; I.C.A., § 55-129; am. 1933, ch. 90, § 2, p. 142; am. 1933, ch. 102, § 1, p.

162; am. 1935, ch. 134, § 5, p. 320; am. 1969, ch. 142, § 5, p. 488; am. 1986, ch. 74, § 12, p. 220.

STATUTORY NOTES

Effective Dates.

Section 2 of S.L. 1933, ch. 102 declared an emergency. Approved Feb. 27, 1933.

Section 6 of S.L. 1935, ch. 134 declared an emergency. Approved Mar. 19, 1935.

JUDICIAL DECISIONS

Cited in: *Oversmith v. Highway Dist. No. 2*, 37 Idaho 752, 218 P. 361 (1923).

57-131. Deposits subject to payment on demand. — All deposits in public depositories shall be demand deposits or deposits in accounts upon

which negotiable orders of withdrawal may be written, or in similar transaction deposit accounts except for deposits of surplus or idle funds which the said depositing units are authorized to make under section 57-127, Idaho Code, with the approval of their respective supervising boards. The term "surplus or idle funds" shall mean the excess of available moneys in the public treasury, including the reasonably anticipated revenues, over and above the reasonably anticipated expenditures chargeable to those moneys, taking into account the dates at which such revenues and expenditures may be expected to occur, the charges of expenses to revenues being done in such a manner as to produce the maximum amount of excess. This definition shall not apply to idle funds in the state treasury, which funds shall be as defined in section 67-1210, Idaho Code.

History.
1921, ch. 256, § 28, p. 557; am. 1925, ch. 45,
§ 11, p. 63; I.C.A., § 55-130; am. 1969, ch.
142, § 6, p. 488; am. 1970, ch. 122, § 2, p.

295; am. 1971, ch. 133, § 1, p. 516; am. 1973,
ch. 273, § 1, p. 571; am. 1976, ch. 42, § 5, p.
90; am. 1981, ch. 2, § 1, p. 4; am. 1983, ch. 38,
§ 6, p. 89.

STATUTORY NOTES

Effective Dates.
Section 3 of S.L. 1970, ch. 122 declared an
emergency. Approved March 9, 1970.
Section 3 of S.L. 1971, ch. 133 declared an
emergency. Approved March 17, 1971.
Section 42 of S. L. 1976, ch. 42 read, "An
emergency existing therefore, which emer-
gency is hereby declared to exist, Sections 1, 2

and 3 of this act shall be in full force and effect
on and after its passage and approval; Sec-
tions 16, 34, 35, 36 and 37 of this act shall be
in full force and effect on and after July 1,
1977. All other sections shall be in full force
and effect on and after July 1, 1976." Ap-
proved March 5, 1976.

JUDICIAL DECISIONS

Cited in: Oversmith v. Highway Dist. No.
2, 37 Idaho 752, 218 P. 361 (1923); Independ-
ent Sch. Dist. No. 22 v. Weiser Nat'l Bank, 45

Idaho 554, 263 P. 997 (1928); Washington
County v. Stephens, 46 Idaho 224, 267 P. 225
(1928).

57-132. Deposits by tax collector and public administrator. — It is hereby made the duty of the tax collector and public administrator of every county of this state to deposit any and all sums of money coming into his hands by virtue of his office in a depository designated by the supervising board under the provisions of this chapter, and any such moneys so deposited shall be a part of the public moneys as defined in this chapter, but shall remain subject to withdrawal by such tax collector or public administrator so depositing the same. Such sums while so on deposit in said depository, shall be held in separate accounts respectively designated as "Tax Collector's Account" and "Public Administrator's Account."

History.
1921, ch. 256, § 28-A, as added by 1925, ch.

45, § 12, p. 63; I.C.A., § 55-131; am. 1969, ch.
142, § 7, p. 488.

JUDICIAL DECISIONS

ANALYSIS

Public administrator.
Tax collector.

Public Administrator.

Heir was entitled to interest on funds of estate deposited by public administrator, who was county treasurer, to his account as county treasurer. *Kiernan v. Cleland*, 47 Idaho 200, 273 P. 938 (1929).

depositing unit and, thus, authorizes a special deposit of any special funds, including those received by county treasurer as tax collector. *Adams County v. First Bank of Council*, 47 Idaho 89, 272 P. 699 (1928).

Tax Collector.

Section 57-127 covers all public moneys of a

57-133. Demand deposits — Payment of service charges — Interest on time deposits. — A public depository may pay interest to the depositing unit upon demand deposits, deposit accounts upon which negotiable orders of withdrawal may be written, and similar transaction deposit accounts made with it by such depositing unit as allowed by state or federal law.

The supervising boards of all depositing units are authorized in their discretion and from time to time to adopt, amend, and/or repeal rules and regulations not inconsistent with other provisions of this act providing for the payment by such depositing unit to its designated depository or depositories of reasonable charges for their services rendered in acting as such depositories. The rate of such charges and the terms and conditions thereof shall be fixed by such supervising boards in such rules and regulations, and shall be uniformly applicable to all designated depositories for such depositing unit under like circumstances and conditions. Such charges shall be allowed and paid from the funds of such depositing unit available for the payment of its general expenses as other claims against said funds are allowed and paid.

Every public depository shall pay interest upon time deposits made by the public depositing unit at rates not less than those paid to investors for deposits of the same amount and under like circumstances and conditions; provided, however, that such time deposits shall bear interest at a rate not in excess of the maximum rate permitted by any applicable governmental regulation.

History.

1921, ch. 256, § 29, p. 557; am. 1925, ch. 45, § 13, p. 63; I.C.A., § 55-132; am. 1933, ch. 90, § 3, p. 142; am. 1937, ch. 98, § 1, p. 142; am. 1969, ch. 142, § 8, p. 488; am. 1970, ch. 142,

§ 2, p. 423; am. 1971, ch. 134, § 1, p. 518; am. 1973, ch. 273, § 2, p. 571; am. 1974, ch. 149, § 1, p. 1367; am. 1981, ch. 2, § 2, p. 4; am. 1981, ch. 146, § 1, p. 251; am. 1983, ch. 38, § 7, p. 89.

STATUTORY NOTES**Compiler's Notes.**

The term "this act" in the first sentence of the second paragraph refers to S.L. 1937, ch. 98, which is codified as §§ 57-133 and 57-134. Probably, the reference should be to "this chapter," being chapter 1, title 57, Idaho Code.

Effective Dates.

Section 4 of S.L. 1933, ch. 90 declared an emergency. Approved February 29, 1933.

Section 3 of S.L. 1970, ch. 142 declared an emergency. Approved March 12, 1970.

Section 3 of S.L. 1971, ch. 134 declared an emergency. Approved March 17, 1971.

Section 3 of S.L. 1974, ch. 149 declared an emergency. Approved March 29, 1974.

Section 5 of S.L. 1981, ch. 2 declared an emergency. Approved February 17, 1981.

JUDICIAL DECISIONS

ANALYSIS

Discretion of director of finance.
Right to interest.

Discretion of Director of Finance.

Provisions of this section and § 67-2743 which prior to the 1937 amendment of each section required every public depository and every state depository to pay interest on public money deposited with it, with the rate of interest being the interest rates on the average of the interest rates on daily bank balances established and in effect in the clearing houses at Salt Lake City, Utah and Portland, Oregon, and which required that the commissioner (now director) should determine and announce such interest rate semiannually did not vest the commissioner (now director) with duty to determine the interest rate but with the simple duty of computing the average interest rate established and in effect in such clearing houses on a fixed date. First Sec. Bank v. Enking, 54 Idaho 735, 35 P.2d 266 (1934).

Right to Interest.

Interest on drainage district funds deposited by county treasurer, after this law became effective, in a bank previously designated by and on terms previously fixed by the board of county commissioners, belonged under this law to the district and not to the county, even though district's board did not designate such depository or regulate terms of the interest. Drainage Dist. No. 2 v. Ada County, 38 Idaho 778, 226 P. 290 (1924).

Heir was entitled to interest on funds of estate deposited by public administrator, who was county treasurer, to his account as county treasurer. Kiernan v. Cleland, 47 Idaho 200, 273 P. 938 (1929).

RESEARCH REFERENCES

Am. Jur. — 63C Am. Jur. 2d, Public Funds, § 13.

**57-133A. Failure of public depositories to maintain standards.
[Repealed.]**

STATUTORY NOTES

Compiler's Notes.

This section, which comprised I.C.A., § 57-133A as added by 1969, ch. 142, § 9, p. 448, was repealed by S.L. 1986, ch. 116, § 1, approved March 24, 1986, 4:49 p.m., effective July 1, 1986.

This section was also amended by S.L. 1986, ch. 74, § 13, approved March 24, 1986, 8:37 a.m., effective July 1, 1986. However, the repeal by S.L. 1986, ch. 116 prevailed as the latest expression of the Legislature. As amended by § 13 of S.L. 1986, ch. 74 the section would have read: "**57-133A. Failure of public depositories to maintain standards.** — When advised by the state investment board that a public depository has failed to maintain the standards of liquidity or otherwise to comply with the provisions of the public depository law or other laws, or with the regulations of the state investment board, the supervising board of a depositing unit shall:

"(1) Notify the treasurer of the depositing unit in writing of such findings and direct the treasurer to withdraw, in whole or in part, the funds of the depositing unit on deposit with such designated depository, such withdrawal to be made within a time to be specified in such notice and in accordance with the provisions of section 57-131, Idaho Code; or

"(2) Waive temporarily the requirements which have not been met if, in the opinion of the supervising board, such withdrawals would jeopardize the interests of depositors generally.

"Funds withdrawn from a designated depository as herein provided shall by the treasurer be deposited with other depositories in the manner prescribed by the supervising board. The treasurer of the depositing unit shall not deposit additional funds with such a designated depository unless authorized to do so by the supervising board."

57-133B. Unlawful disclosure of information relating to designated depositories — Penalty. — Any information obtained from any designated depository by the treasurer of a depositing unit shall be subject to disclosure according to chapter 3, title 9, Idaho Code, provided that federal or state examiners shall have a lawful right to examine said designated depository or to proper officials legally empowered to investigate criminal charges relating to said designated depository shall have a right to examine said depository. Any public official who violates any provision of this section by improperly disclosing information shall forfeit his office or employment and shall also be guilty of a felony. Any person who is not lawfully entitled to such information and who attempts to obtain such information illegally or who misuses such information as he may have obtained shall be guilty of a felony.

History.

I.C., § 57-133B, as added by 1969, ch. 142, § 10, p. 448; am. 1986, ch. 74, § 14, p. 220; am. 1990, ch. 213, § 86, p. 480.

STATUTORY NOTES

Cross References.

Penalty for felony when not otherwise provided, § 18-112.

Effective Dates.

Section 111 of S.L. 1990, ch. 213 as

amended by § 16 of S.L. 1991, ch. 329 provided that §§ 3 through 45 and 48 through 110 of the act should take effect July 1, 1993 and that §§ 1, 2, 46 and 47 should take effect July 1, 1990.

57-134. Accounting for moneys deposited. — The treasurer shall require, and it is hereby made the duty of every such depository to keep accurate accounts of all such moneys deposited with it, showing the amount deposited, and when deposited, and to render, at the beginning of each and every month, to the treasurer and auditor a statement, in duplicate, showing the daily balance of the public moneys of the depositing unit held by it during the month next preceding.

History.

1921, ch. 256, § 30, P. 557; am. 1927, ch. 154, § 12, p. 200; I.C.A., § 55-133; am. 1937, ch. 98, § 2, p. 142.

STATUTORY NOTES

Effective Dates.

Section 4 of S.L. 1937, ch. 98 provided that the act should take effect on and after August 24, 1937.

57-135. Treasurer's monthly report. — It is the duty of the treasurer to file a report in writing, verified by his affidavit, with the auditor on the last business day of each and every month, showing exactly how much cash he has in the treasury and in what bank or banks deposited, and if in more than one, how much in each, which reports shall be examined by the supervising board at the next regular session following the filing of the same, and compared by it with the books of the treasurer at least twice a year, and if it shall find that the treasurer has wilfully made any false statement therein he may be suspended or removed from office.

History.

1921, ch. 256, § 31, p. 557; I.C.A., § 55-134.

**57-136. Duty of treasurer upon receipt of notice of withdrawal.
[Repealed.]**

STATUTORY NOTES**Compiler's Notes.**

§ 55-135, was repealed by S.L. 1969, ch. 142,

This section, comprising S.L. 1921, ch. 256, § 12, p. 488.
§ 32, p. 557; 1925, ch. 45, § 14, p. 63; I.C.A.,

57-137. Responsibility for loss through insolvency of bank. —
Where the treasurer in accordance with the terms and provisions of this chapter has deposited and kept on deposit any public moneys in designated depositories, he shall not be liable personally or upon his official bond for any public moneys that may be lost by reason of the failure or insolvency of any such depository.

History.

1921, ch. 256, § 33, p. 557; am. 1925, ch. 45,
§ 15, p. 63; I.C.A., § 55-136.

STATUTORY NOTES**Effective Dates.**

Section 16 of S.L. 1925, ch. 45 declared an
emergency. Approved February 20, 1925.

JUDICIAL DECISIONS**ANALYSIS**

Liability of school district treasurer.

"Lost" money defined.

Liability of School District Treasurer.

The treasurer of a school district who deposited and kept on deposit public moneys in the designated depository is not liable personally or upon his official bond for loss by reason of the failure or insolvency of such depository. Independent Sch. Dist. No. 6 v. Craven, 54 Idaho 158, 29 P.2d 753 (1934).

"Lost" Money Defined.

Upon insolvency of bank, money deposited therein is "lost" within meaning of statute, even though portion or all of deposit may be ultimately recovered from bank or stockholders or upon depository bond. Buhl Hwy. Dist. v. Allred, 41 Idaho 54, 238 P. 298 (1925).

RESEARCH REFERENCES

Am. Jur. — 63C Am. Jur. 2d, Public Funds,
§ 9.

57-138. Liability of county auditor under public depository law.
— The county auditor shall not be liable personally or upon his official bond for any losses by reason of his acts under the provisions of the public depository law, except insofar as such acts are in bad faith and have resulted in such loss.

History.

1921, ch. 256, § 33-A, as added by 1927, ch. 154, § 13, p. 200; I.C.A., § 55-137.

57-139. Offenses by treasurer — Penalty. — The making of profit, directly or indirectly, by the treasurer of any depositing unit out of any money in the treasury, belonging to the depositing unit, the custody of which the treasurer is charged with, by loaning or otherwise using it, or depositing the same in any manner contrary to law, or the removal by the treasurer or by his consent, of such moneys, or a part thereof, out of the vault or safe of the treasurer's department, after the same shall have been provided by the depositing unit, or out of any legal depository of such moneys, except for the payment of warrants, legally drawn, or for the purpose of depositing the same, under the provisions of this law, in any designated depositories, shall constitute a felony, and on conviction thereof, shall subject the treasurer to imprisonment in the state penitentiary for a term of not exceeding two (2) years, or a fine not exceeding five thousand dollars (\$5,000), or to both such fine and imprisonment, and the treasurer shall be liable upon his official bond for all profits realized from such unlawful use of such funds.

History.

1921, ch. 256, § 34, p. 557; I.C.A., § 55-138; am. 1986, ch. 74, § 15, p. 220.

JUDICIAL DECISIONS

Cited in: Independent Sch. Dist. No. 22 v. (1928); Kiernan v. Cleland, 47 Idaho 200, 273 Weiser Nat'l Bank, 45 Idaho 554, 263 P. 997 P. 938 (1929).

RESEARCH REFERENCES

Am. Jur. — 63C Am. Jur. 2d, Public Officers and Employees, §§ 252 to 257.

57-140. Neglect of treasurer — Penalty. — If the treasurer of any depositing unit shall wilfully fail or refuse at any time to do or perform any act required of him by the provisions of this law relative to the deposit of public funds, he shall be guilty of a misdemeanor, and upon conviction thereof, he shall be sentenced to pay a fine not exceeding \$5000.

History.

1921, ch. 256, § 35, p. 557; I.C.A., § 55-139.

RESEARCH REFERENCES

Am. Jur. — 63C Am. Jur. 2d, Public Officers and Employees, § 350 et seq.

57-141. Bribery of treasurer a felony — Penalty. — The offering, or giving, directly or indirectly, by designated depository, or by any officer or stockholder thereof, or by any other person or persons in its or their behalf, or by its or their knowledge, acquiescence or authority, or in its or their

interest, to the treasurer of any depositing unit, of any gift, compensation, reward or inducement, with the intent or for the purpose of inducing said treasurer to deposit public funds in any designated depository contrary to any law of this state, shall constitute a felony, and shall, upon conviction thereof, subject the person offending to imprisonment in the state penitentiary for a period not exceeding two (2) years, or to a fine not exceeding five thousand dollars (\$5,000), or to both such fine and imprisonment.

History.

1921, ch. 256, § 36, p. 557; I.C.A., § 55-140;
am. 1986, ch. 74, § 16, p. 220.

57-142. Expenses — Audit and payment. — Any expense incurred in carrying out the provisions of the public depository law shall be audited by the supervising board and paid out of the current revenues of the depositing unit.

History.

1921, ch. 256, § 37, p. 557; I.C.A., § 55-141.

STATUTORY NOTES

Cross References.

Expenses incurred under law, audit and payment, § 67-2723.

57-143. Inspection of treasurer's office. — The supervising board or any person authorized by it in writing, may, during business hours, in the presence of the treasurer or his deputy or clerk, inspect and examine the books of account in the office of its treasurer and all contracts, writings, securities and other papers belonging to the depositing unit or pertaining to the business thereof, held by the treasurer, and may inspect and count the moneys belonging to the county and the several funds thereof in the custody of the treasurer; and it is hereby made the duty of the treasurer to furnish all reasonable facilities for the purpose.

History.

1921, ch. 256, § 38, p. 557; I.C.A., § 55-142.

57-144. Inspection of auditor's office. — The supervising board or any person authorized by it in writing, may, during business hours, in the presence of the county auditor or his deputy, inspect and examine the contracts, writings, securities, bonds and other papers belonging to the depositing unit, or pertaining to the business thereof in the custody of the auditor, and it is hereby made the duty of the county auditor to furnish all reasonable facilities for the purpose.

History.

1921, ch. 256, § 39, p. 557; I.C.A., § 55-143.

57-145. Deposit of funds by county officers other than treasurer pending deposit with treasurer — Manner of depositing — Duties and liabilities of officer and receiving depositories. — All public and other moneys and funds in the official custody of any county officer other than the county treasurer as such and as ex officio public administrator and ex officio tax collector, including checks, drafts and all other instruments for the payment of money acceptable for deposit in banks, may, pending the deposit thereof with the county treasurer or other officer or person entitled by law to receive the same, be deposited on general deposit with interest in any designated depository in such officer's county, provided that such account is insured by the federal government and that said funds are readily accessible for distribution according to law. All interest accrued shall be paid into the county current expense fund, or if there be no designated depository in said county, then in any designated depository in the state of Idaho, to the credit of such officer in his official capacity and subject to payment on demand on the check of such officer or that of his successor in office in like capacity.

No designated depository accepting deposits hereunder shall have any duty or obligation whatever as to the disposition of such funds by the officer depositing the same, nor be liable in any respect for such officer's misappropriation, misapplication or wrongful use or disposal thereof, nor for his failure to deposit the same with the county treasurer or other officer or person entitled to receive the same at the time and in the manner provided by law; but nothing herein shall be construed as in any wise relieving such officer of the duty of paying over such funds to the county treasurer or other officer or person entitled to receive the same at the time and in the manner fixed by law, nor of any other duty or liability with respect thereto, except that such officer shall not be liable either personally or on his official bond for the nonpayment by any designated depository of funds deposited with it pursuant to the provisions of this act.

History.

1935, ch. 50, § 1, p. 96; am. 1969, ch. 142,

§ 11, p. 488; am. 1983, ch. 132, § 1, p. 327;
am. 1986, ch. 74, § 17, p. 220.

STATUTORY NOTES

Compiler's Notes.

The term "this act" at the end of this section refers to S.L. 1935, ch. 50, which is compiled as this section.

Section 13 of S.L. 1969, ch. 142 declared an emergency. Approved March 14, 1969.

Effective Dates.

Section 3 of S.L. 1935, ch. 50 declared an emergency. Approved February 25, 1935.

CHAPTER 2

MUNICIPAL BOND LAW

SECTION.

- 57-201. Title of act.
- 57-202. Application of act — Definitions.
- 57-203. Authorization of bonds.
- 57-204. Bonds — Form and recitals.
- 57-205. Bonds — Execution and signing.
- 57-206. Bonds — Interest coupons — Form and recitals.
- 57-207. Bonds — Denomination.
- 57-208. Bonds — Interest rate.
- 57-209. Bonds and interest coupons — Where payable.
- 57-210. Bonds — Maximum term.
- 57-211. Bonds — Amortized maturities.
- 57-212. Bonds for each purpose a distinct series.
- 57-213. Bonds — Registration.
- 57-214. Sale of bonds — Procedure — Minimum price.
- 57-215. Sale of bonds — Notice and request for bids — Publication.
- 57-216. Sale of bonds — Contents of notice — Bids — Deposit by bidder — Acceptance or rejection of bids.
- 57-217. Sale of bonds — Discount or commission to bidder prohibited — Employment of expert services authorized.

SECTION.

- 57-218. Funding and refunding bonds — Issuance after application of available moneys to payment of outstanding bonds.
- 57-219. Registration of bonds — Liability of treasurer.
- 57-220. Application of proceeds.
- 57-221. Security.
- 57-222. Tax levies and sinking fund.
- 57-223. Separability.
- 57-224. Redemption.
- 57-225. Bonds issued under former laws.
- 57-226. Effective date of act.
- 57-227. Issuance and sale of bonds and securities to United States government — Interest rate.
- 57-228. Bonds — Amortized maturities.
- 57-229. "Issuer" defined.
- 57-230. Powers of issuer.
- 57-231. Issuance of bonds by the state of Idaho or political subdivisions — Variable interest rates permitted — Credit enhancement arrangements.
- 57-232. Sale of bonds — Definition of private sale.
- 57-233. Sale of bonds — Electronic bidding.
- 57-234. Creation and perfection of government security interests.

57-201. Title of act. — This act shall be known as the "Municipal Bond Law" of the state of Idaho.

History.

1927, ch. 262, § 1, p. 262; I.C.A., § 55-201.

STATUTORY NOTES

Cross References.

Assumption of local indebtedness by state prohibited, Idaho Const., Art. XII, § 3.

Facsimile signature of public officials, use on public securities, §§ 59-1018 to 59-1023.

Loan of credit by municipality prohibited, Idaho Const., Art. VIII, § 4; Idaho Const., Art. XII, § 4.

Sanitary and school purposes, right to contract indebtedness for, Idaho Const., Art. XII, § 4.

Compiler's Notes.

The term "this act" refers to S.L. 1927, ch. 262, which is compiled as §§ 31-1901, 31-1903, and 57-201 to 57-226.

JUDICIAL DECISIONS

Exchange of Bonds for Warrants.

Counties may exchange their bonds for outstanding warrants existing as of the second Monday in January, 1933, or sell bonds to raise money to pay warrants. *Lloyd Corp. v. Bannock County*, 53 Idaho 478, 25 P.2d 217 (1933).

Cited in: *Filer Hwy. Dist. ex rel. Alworth v. Shearer*, 54 Idaho 201, 30 P.2d 199 (1934); *Henley v. Elmore County*, 72 Idaho 374, 242 P.2d 855 (1952); *Dohrman v. Tomlinson*, 88 Idaho 313, 399 P.2d 255 (1965).

57-202. Application of act — Definitions. — All bonds, including funding and refunding bonds, hereafter issued, under lawful authority, by any county, city, village or highway district of the state of Idaho, excepting local street and sewer improvement bonds issued under the provisions of chapter 41, title 42 and chapter 31, title 50, shall be issued in the form and manner, and be registered, disposed of and redeemed, in accordance with the provisions of this act.

The following expressions are used in this act with the following designated meanings:

(a) "Governing board" or "governing body," as meaning the board of county commissioners of a county, and/or the board of highway district commissioners of a highway district and/or the council and mayor of a city.

(b) "Issuer," "issuing corporation" and "corporation," as meaning each or all of said municipal corporations and bodies corporate named hereinbefore.

(c) Any provision that any action or thing shall be authorized, taken, or done by "ordinance or resolution," shall be taken to mean that any such governing body shall proceed by ordinance or by resolution as required or permitted by law or by the customary mode of proceeding by each such governing body, respectively, not forbidden by law.

History.

1927, ch. 262, § 2, p. 546; I.C.A., § 55-202;
am. 2010, ch. 79, § 35, p. 133.

STATUTORY NOTES

Cross References.

Cities, bond issues, §§ 50-1019 to 50-1042.

Counties, bond issues, § 31-1901 et seq.

County hospitals for indigent sick, bond issues, § 31-3513.

Highway users' fund bonds, § 40-109.

Refunding bonds, issuance, § 57-501 et seq.

Revenue bonds, power to issue, Idaho Const., Art. VIII, § 3.

paragraph, substituted "provisions of chapter 41, title 42 and chapter 31, title 50" for "provisions of chapters 31, 32, and 35 of title 50"; and in subsection (a) deleted "and/or the board of trustees and chairman of such board of trustees (of a village)" from the end.

Compiler's Notes.

The term "this act" refers to S.L. 1927, ch. 262, which is compiled as §§ 31-1901, 31-1903, and 57-201 to 57-226.

Amendments.

The 2010 amendment, by ch. 79, in the first

JUDICIAL DECISIONS

ANALYSIS

Exchange of bonds for warrants.

Funding warrant indebtedness.

Exchange of Bonds for Warrants.

Counties may exchange their bonds for outstanding warrants existing as of the second Monday in January, 1933, or sell bonds to raise money to pay warrants. *Lloyd Corp. v. Bannock County*, 53 Idaho 478, 25 P.2d 217 (1933).

Funding Warrant Indebtedness.

The constitution does not prohibit funding warrant indebtedness, by exchange of bonds for warrants or by issuing and selling bonds and using same for payment of outstanding warrants. *Lloyd Corp. v. Bannock County*, 53 Idaho 478, 25 P.2d 217 (1933).

57-203. Authorization of bonds. — Whenever the governing board of any such corporation shall deem it advisable to issue the negotiable coupon

bonds thereof for any authorized purpose, such governing board shall provide therefor by ordinance or resolution, duly passed and adopted and spread at length on the permanent record of its proceedings, which ordinance or resolution shall specify and state the amount and purpose of such proposed bond issue, the ultimate maturity of such bond issue, and that the annual bond maturities thereof shall be payable in accordance with the provisions of this act. If such issue will create a new debt the object thereof must be stated; and if the purpose thereof shall be the funding or refunding of an existing indebtedness, such existing indebtedness shall be described sufficiently for identification and all bonds, warrants or other securities thus to be funded or refunded shall be described by setting forth their identifying numbers, dates and amounts and the fund or funds out of which the same, according to their terms, are payable; and said ordinance or resolution, or a subsequent ordinance or resolution which shall be passed or adopted before or at the time of incurring such bond indebtedness, shall specify the provisions to be made for the payment of principal and interest of such bonds and also to constitute a sinking fund for the payment of the principal thereof within thirty (30) years from the time of contracting such bond indebtedness as required by law: provided, that where such bonds shall be required by law to be authorized by an election upon the question of the authorization thereof, the ordinance or resolution providing for and calling such election thereon shall comply with the foregoing provisions and requirements of this section in the ordinance or resolution. The governing body of the issuing corporation shall prescribe the bond form and coupon form by ordinance or resolution at any time prior to the delivery of such bonds to the purchaser thereof.

History. am. 1963, ch. 183, § 1, p. 542; am. 1969, ch. 1927, ch. 262, § 3, p. 546; I.C.A., § 55-203; 238, § 1, p. 753.

STATUTORY NOTES

Cross References.

Coupon bonds, registration as to principal only, § 57-401 et seq.

Issuance of notes in anticipation of taxes, by taxing districts, § 63-3101 et seq.; by state, §§ 63-3201 to 63-3204.

Validation of bond issue election, § 34-2429.

Compiler's Notes.

The term "this act" refers to S.L. 1927, ch. 262, which is compiled as §§ 31-1901, 31-1903, and 57-201 to 57-226.

JUDICIAL DECISIONS

Election Authorizing Bond Issue.

An ordinance calling for an election on municipal bond issue must be sufficiently definite to reasonably apprise the voters of the general nature, purpose and scope of the

improvement contemplated. A favorable vote approves the bond issue and authorizes the proposed work. *Durand v. Cline*, 63 Idaho 304, 119 P.2d 891 (1941).

RESEARCH REFERENCES

C.J.S. — 64A C.J.S., Municipal Corporations, §§ 2118 to 2120.

57-204. Bonds — Form and recitals. — Each bond shall be numbered consecutively and shall be payable and paid to bearer, in numerical order, lowest numbers first, and shall state and recite upon the face thereof the purpose for which the same is issued, the principal amount thereof, rate of interest thereon, date of issue, time and place or places of payment, and that it is issued in conformity with and after full compliance with the constitution of Idaho and this act and all other laws applicable thereto, and that the full faith, credit and all taxable property within the issuing corporation are and shall continue pledged for and until the full payment of the principal and interest thereof; and there may be set forth upon the face of said bonds such other statements and recitals as are customary and not prohibited by law.

History.

1927, ch. 262, § 4, subd. (a), p. 546; I.C.A.
§ 55-204.

STATUTORY NOTES

Compiler's Notes.

The term "this act" refers to S.L. 1927, ch.

262, which is compiled as §§ 31-1901, 31-1903, and 57-201 to 57-226.

RESEARCH REFERENCES

Am. Jur. — 64 Am. Jur. 2d, Public Securities and Obligations, § 265 et seq.

C.J.S. — 64A C.J.S., Municipal Corporations, § 2168.

57-205. Bonds — Execution and signing. — Each bond shall be executed and signed in the corporate name as follows, viz: by the mayor of an issuing city; by the chairman of the board of trustees of an issuing village, and by the chairman or president of the governing board of an issuing county or highway district; and each bond shall be countersigned by the treasurer thereof and shall be attested by the signature of the clerk or secretary thereof under the official seal of the issuing corporation.

History.

1927, ch. 262, § 4, subd. (b), p. 546; I.C.A.,
§ 55-205.

RESEARCH REFERENCES

C.J.S. — 64A C.J.S., Municipal Corporations, §§ 2178, 2179.

57-206. Bonds — Interest coupons — Form and recitals. — The interest coupons which shall be attached to each such bond shall be numbered from one upwards consecutively commencing with that coupon first maturing, and all such interest coupons shall state on the face thereof the amount thereof, name of the issuing corporation, the identifying series and issue and number of the bond to which it is attached and each such coupon shall provide for the payment of the interest accruing semiannually upon said bond and said interest coupons shall be payable semiannually,

and at the same place or places of payment as fixed in such bond and shall be signed by the treasurer of the issuer by his written or facsimile signature: provided, however, that the first and last coupons of any bond series or issue may provide for the payment of interest for a shorter or longer period than six (6) months but not in excess of one (1) year.

History.

1927, ch. 262, § 4, subd. (c), p. 546; I.C.A., § 55-206.

RESEARCH REFERENCES

C.J.S. — 64A C.J.S., Municipal Corporations, §§ 2168 to 2177.

57-207. Bonds — Denomination. — The denominations of each such bond shall be one thousand dollars (\$1,000) or any even multiple thereof not exceeding one hundred thousand dollars (\$100,000) as fixed by ordinance or resolution prior to the issuance thereof; provided, that bond number one (1) of each series or issue may be issued in any denomination not exceeding one hundred thousand dollars (\$100,000).

History.

1927, ch. 262, § 4, subd. (d), p. 546; I.C.A., § 55-207; am. 1963, ch. 183, § 2, p. 542; am. 1984, ch. 135, § 1, p. 321.

RESEARCH REFERENCES

Am. Jur. — 64 Am. Jur. 2d, Public Securities and Obligations, § 161.

C.J.S. — 64A C.J.S., Municipal Corporations, § 2169.

57-208. Bonds — Interest rate. — All such bonds shall bear interest at a rate or rates as may be fixed by any such governing board prior to the issuance of such bonds, which interest shall be payable semiannually (or as specially provided for hereinbefore) on such dates as may be fixed by any such governing board prior to the issue of any such bonds: provided, that when any proposition of the issuance of any such bond submitted to the vote of the electors shall have specified a maximum rate of interest to be borne by such bonds, the rate of interest thereon shall not exceed such specified maximum rate.

History.

1927, ch. 262, § 4, subd. (e), p. 546; I.C.A., § 55-208; am. 1970, ch. 133, § 18, p. 309.

STATUTORY NOTES

Cross References.

County, bonds issued for funding warrants, semiannual interest, § 31-1901.

Compiler's Notes.

The words enclosed in parentheses so appeared in the law as enacted.

RESEARCH REFERENCES

C.J.S. — 64A C.J.S., Municipal Corporations, § 2171.

57-209. Bonds and interest coupons — Where payable. — Such bonds and interest coupons shall be made payable and be payable at the office of the treasurer of the issuer or at the office of the treasurer of the State of Idaho, or at some bank or trust company in the state of Idaho or in the city and state of New York, which place or places of payment shall be designated by the governing board of the issuer prior to the issuance of such bonds, and such places of payment may be made and expressed in the alternative upon the face of the bonds and coupons and the bonds and coupons may be made payable at such alternative places of payment at the option of the holder thereof.

History.

1927, ch. 262, § 4, subd. (f), p. 546; I.C.A., § 55-209; am. 1935, ch. 45, § 1, p. 83.

STATUTORY NOTES

Cross References.

State treasurer, § 67-1201 et seq.

RESEARCH REFERENCES

C.J.S. — 64A C.J.S., Municipal Corporations, §§ 2170 to 2172.

57-210. Bonds — Maximum term. — No bonds shall be issued to run for a longer term than thirty (30) years from the date of the bonds.

History.

1927, ch. 262, § 4, subd. (g), p. 546; I.C.A., § 55-210; am. 1963, ch. 183, § 3, p. 542; am. 1969, ch. 238, § 2, p. 753.

STATUTORY NOTES

Cross References.

Maximum duration, Idaho Const., Art. VIII, § 3.

RESEARCH REFERENCES

C.J.S. — 64A C.J.S., Municipal Corporations, §§ 2170 to 2172.

57-211. Bonds — Amortized maturities. — The bonds of any one (1) issue shall mature and be payable upon an annual amortization plan, the first annual amortized principal payment shall mature and be payable within two (2) years from and after the date of the bonds, and the various annual maturities shall, as nearly as practicable, be in such principal amounts as will, together with the accruing interest on all outstanding

bonds of such issue, be met and paid by an equal annual tax levy for the payment of the principal of said bonds and interest thereon during the term for which such bonds shall be issued: provided, however:

(a) That anything in this section to the contrary notwithstanding, whenever the governing body of the issuing corporation shall in its sole discretion determine it to be to the advantage of such corporation, it may issue and sell such bonds with such annual maturities as it shall determine either prior to or after the fixing of the interest rates such bonds will bear, and in every such instance it shall be permissible for the governing body to issue such bonds in the annual maturities so determined upon and bearing the rate or rates of interest ascertained upon the sale of such bonds.

(b) That nothing herein contained shall be construed as prohibiting any serial maturity from being in the sum of \$5,000 or an even multiple thereof.

History.

1927, ch. 262, § 4, subd. (h), p. 546; I.C.A., § 55-211; am. 1933, ch. 38, § 1, p. 50; am.

1935, ch. 95, § 1, p. 180; am. 1963, ch. 183, § 4, p. 542.

STATUTORY NOTES

Compiler's Notes.

Section 5 of S.L. 1963, ch. 183 read: "If any provision of this act or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to this end the provisions of this act are declared to be severable."

Effective Dates.

Section 2 of S.L. 1933, ch. 38 declared an emergency. Approved February 14, 1933.

Section 2 of S.L. 1935, ch. 95 declared an emergency. Approved March 9, 1935.

Section 6 of S.L. 1963, ch. 183 declared an emergency. Approved March 19, 1963.

57-212. Bonds for each purpose a distinct series. — All bonds authorized by the vote of the electors upon a distinct proposition submitted unto them or authorized by any governing board where no popular election is required by law and for one purpose, shall constitute a distinct series, the bonds of which may be issued by any such governing board in separate issues, if deemed by such governing board to be to the best interest of the issuer so to do. The bonds of each series and of each of the issues thereunder shall be distinguished upon the face of each of such bonds by some distinguishing numbers or letters or descriptive language as may be determined by any such governing board; and the bonds of each such issue shall be numbered from one upwards consecutively.

History.

1927, ch. 262, § 4, subd. (i), p. 546; I.C.A., § 55-212.

57-213. Bonds — Registration. — After the sale of any such bonds and before the issuance by delivery to the purchaser thereof, the same shall be registered as required hereinafter, and the officer or officers making such registration shall certify the fact of such registration by him upon the back of each bond.

History.

1927, ch. 262, § 4, subd. (j), p. 546; I.C.A., § 55-213.

STATUTORY NOTES**Cross References.**

Registration of bonds, § 57-219.

RESEARCH REFERENCES

Am. Jur. — 64 Am. Jur. 2d, Public Securities and Obligations, §§ 12, 13.

C.J.S. — 64A C.J.S., Municipal Corporations, § 2180.

57-214. Sale of bonds — Procedure — Minimum price. — Funding and refunding bonds shall be sold as provided in sections 57-214 through 57-218, Idaho Code, or they may be issued by way of exchange for unpaid indebtedness or outstanding bonds to be funded or refunded thereby, as may be determined by any such governing body.

All other bonds shall be sold, after notice given as provided in section 57-215, Idaho Code, at private sale as provided in section 57-232, Idaho Code, or after notice given as herein provided, at public sale at a regular or special meeting of the governing body of the issuer corporation, and any funding or refunding bonds shall be sold in like manner, if so ordered by any such governing body. No bonds shall be sold for less than par and accrued interest to date of delivery. Any bonds, notes or other obligations may be sold by electronic bidding as provided in section 57-233, Idaho Code.

History.

1927, ch. 262, § 5, subd. (a), p. 546; I.C.A., § 55-214; am. 2001, ch. 264, § 2, p. 967.

STATUTORY NOTES**Cross References.**

Sale of bonds to United States government, § 57-227.

Effective Dates.

Section 7 of S.L. 2001, ch. 264 declared an emergency. Approved March 31, 2001.

JUDICIAL DECISIONS**Constitutionality of Refunding Bonds.**

Issuance of refunding bonds for the purpose of retiring warrant indebtedness of the county does not create "indebtedness" prohibited by

constitutional provisions placing limitation on county indebtedness. *Lloyd Corp. v. Bannock County*, 53 Idaho 478, 25 P.2d 217 (1933).

RESEARCH REFERENCES

Am. Jur. — 64 Am. Jur. 2d, Public Securities and Obligations, § 172 et seq.

C.J.S. — 64A C.J.S., Municipal Corporations, §§ 2160 to 2167.

57-215. Sale of bonds — Notice and request for bids — Publication. — (1) If bonds are sold at public sale, notice of the intention to sell any such bonds and requesting bids therefor shall be published in the name of the governing body of any such issuer in the official newspaper thereof for at

least three (3) consecutive publications therein at weekly intervals. The date of sale thereof, as therein designated, shall be after the lapse of at least twenty-one (21) full days from and after the date of the first publication of such notice, counting the date of the first publication (as the first publication) as the first of such twenty-one (21) days; and if said corporation shall not have designated an official newspaper the publication shall be had in any newspaper published and of general circulation within the corporate limits of said issuing corporation as specially designated or approved by any such governing body; and if there shall be no newspaper published within the corporate limits of any such issuing corporation, such notice shall be published in a newspaper of general circulation in the county of such issuing corporation as designated or approved by any such governing body. The mayor or chairman or presiding officer of any such corporation and the clerk or secretary thereof shall cause such publication to be made and given as prescribed herein, subject to the direction, designation or approval of any such governing body as herein set forth. It shall be proper to commence the publication of such notice of sale prior to, or contemporaneous with, the publication of the notice of the election at which the proposition of the issuance of any such bonds shall be submitted: provided only, that such bonds shall not be sold until their issuance shall have been duly authorized.

(2) If bonds are sold at private sale, notice of the intention to sell such bonds at private sale shall be published once in the name of the issuer in a newspaper of general circulation within the issuer's boundaries at least three (3) days prior to the time scheduled by the issuer for approving the private sale of such bonds. Failure to comply with this requirement shall not invalidate the sale of the bonds, so long as the issuer has made a good faith effort to comply.

History.

1927, ch. 262, § 5, subd. (b), p. 546; I.C.A., § 55-215; am. 1977, ch. 244, § 1, p. 721; am. 2001, ch. 264, § 3, p. 967.

STATUTORY NOTES**Effective Dates.**

Section 7 of S.L. 2001, ch. 264 declared an emergency. Approved March 31, 2001.

RESEARCH REFERENCES

C.J.S. — 64A C.J.S., Municipal Corporations, §§ 2160 to 2167.

57-216. Sale of bonds — Contents of notice — Bids — Deposit by bidder — Acceptance or rejection of bids. — A notice of public sale shall set forth the intention of the issuing corporation to sell such bonds or a specified part thereof and shall request and require sealed or electronic bids therefor and require bidders to submit bids specifying (a) the lowest rate of interest and premium, if any above par, at which the bidder will purchase such bonds, or (b) the lowest rate of interest at which the bidder will purchase such bonds at par, and shall require each such bid (except any bid

which may be received from the state of Idaho or its department of finance) to be accompanied by a cashier's check, a certified check, or surety bond made payable to the issuing corporation in such amount as the governing body deems necessary or by a cash deposit in like amount, which such cashier's check, certified check, surety bond or cash deposit shall be returned to any such bidder if his bid be not accepted, and which cashier's check, certified check, surety bond or cash deposit of any successful bidder who shall fail, neglect, or refuse to accept the bonds so sold to complete and to pay therefor in accordance with the terms of such successful bid within thirty (30) days following the acceptance thereof, shall be forfeited to the issuing corporation. Such notice shall state the maximum rate of interest which such bonds may legally bear and that none of the bonds shall be sold for less than par and accrued interest to date of delivery thereof, and shall specify the place and designate the day and hour, respectively, as the place where, and the time prior to which, any such sealed or electronic bids will be received for the purchase of such bonds; and at said place and time so specified in such notice and fixed or approved by the governing body as the place and time for the consideration of any such bids the said governing body and the mayor, chairman, or other chief executive officer or presiding officer of the governing body shall meet in public special or regular meeting for the purpose of considering such bids, awarding the bonds, or rejecting any and all bids therefor. At such meeting or at an adjournment thereof the said bonds shall be sold to the bidder making the best bid therefor, subject, as aforesaid, to the right of any such governing body to reject any and all bids and to readvertise any such bonds for sale in the manner herein prescribed, or at private sale, until said bonds have been sold.

History.

1927, ch. 262, § 5, subd. (c), p. 546; I.C.A., § 55-216; 1951, 1961, ch. 45, § 1, p. 55; am. 2001, ch. 264, § 4, p. 967.

STATUTORY NOTES**Compiler's Notes.**

The words enclosed in parentheses so appeared in the law as enacted.

Section 7 of S.L. 2001, ch. 264 declared an emergency. Approved March 31, 2001.

Effective Dates.

Section 2 of S.L. 1951, ch. 45 declared an emergency. Approved February 21, 1951.

57-217. Sale of bonds — Discount or commission to bidder prohibited — Employment of expert services authorized. — No discount or commission shall be allowed or paid on or for any such sale to any purchaser or bidder, directly or indirectly, for or on account of any legal or other services rendered by any such bidder's attorneys or employees in connection with the issuance or sale of such bonds: provided, that the governing body of any such issuer may employ expert legal or other expert services in connection with the authorization and issuance of such bonds if in the judgment of such governing body it will be to the financial interest of the issuer so to do.

History.

1927, ch. 262, § 5, subd. (d), p. 546; I.C.A.,
§ 55-217.

RESEARCH REFERENCES

C.J.S. — 64A C.J.S., Municipal Corporations, § 2164.

57-218. Funding and refunding bonds — Issuance after application of available moneys to payment of outstanding bonds. — If any governing body shall determine that the outstanding indebtedness of any such corporation may be funded or refunded, to the profit and benefit of such corporation and without incurring any additional liability by the issuance of funding or refunding bonds, it may provide by ordinance or resolution for the issuance of such funding or refunding bonds in an amount equal to the unpaid principal and interest of such outstanding bonds or other indebtedness: provided, that before any such governing body shall issue any bonds to refund the outstanding bonded indebtedness or to fund any of the other outstanding indebtedness of any such issuing corporation as in this section specially provided and in this act elsewhere provided, it shall cause all moneys on hand in the corporate treasury available for the payment and discharge of any such outstanding bonded indebtedness, or to the payment and discharge of any such unpaid other indebtedness of said corporation, to be applied in payment and discharge thereof, and shall issue such refunding bonds, or funding bonds, respectively, for the remainder only of the bonded indebtedness, or other indebtedness, respectively.

History.

1927, ch. 262, § 5, subd. (e), p. 546; I.C.A.,
§ 55-218.

STATUTORY NOTES

Compiler's Notes.

The term "this act" refers to S.L. 1927, ch.

262, which is compiled as §§ 31-1901, 31-1903, and 57-201 to 57-226.

JUDICIAL DECISIONS

ANALYSIS

Application to villages.
Constitutionality of refunding bonds.
Judgment voiding bonds.

Application to Villages.

Since § 50-2821 (now § 50-1036) refers to the "Municipal Bond Law" a village by resolution of the board of trustees may authorize, issue and sell refunding bonds under the provisions of §§ 50-2812 to 50-2827 (now §§ 50-1027 to 50-1042). *Adams v. Pritchard*, 88 Idaho 325, 399 P.2d 252 (1965).

Constitutionality of Refunding Bonds.

The issuance of refunding bonds for the

purpose of retiring warrant indebtedness of the county is not prohibited by constitutional provision placing limitation on county indebtedness. *Lloyd Corp. v. Bannock County*, 53 Idaho 478, 25 P.2d 217 (1933).

Judgment Voiding Bonds.

Judgment declaring municipal bonds void in action by holder to recover amount due on interest coupons was held res judicata in equity. *Heyburn v. Security Sav. & Trust Co.*, 55 Idaho 732, 49 P.2d 258 (1935).

RESEARCH REFERENCES

C.J.S. — 64A C.J.S., Municipal Corporations, §§ 2184 to 2190.

57-219. Registration of bonds — Liability of treasurer. — After the sale of any such bonds and before the issuance by delivery to the purchaser thereof, and before the delivery of any funding or refunding bonds which may be issued by way of exchange for any outstanding indebtedness or bonds funded or refunded thereby, all of such bonds shall be duly registered by the county auditor or by the clerk or secretary of the issuing corporation in numerical order in a permanent public record book kept by him in his said office for that purpose, and thereafter the governing body or governing board of the issuing corporation may from time to time in accordance with the terms of sale of such bonds deliver or cause to be delivered any or all of such bonds to the treasurer of such issuer, who shall file his receipt therefor in the office of such auditor, clerk or secretary of the issuing corporation. Such treasurer shall, as and when such bonds are delivered to him as aforesaid, forthwith also register the same in a permanent public record book kept by him in his said office for that purpose, and thereafter such treasurer shall deliver such bonds to the purchaser or purchasers thereof as directed by the governing body of the issuing corporation and upon receipt by him of the purchase price thereof, and shall note in such register the name or names of the purchasers to whom such bonds are delivered and date of delivery thereof. All registration of bonds shall show the number, date, and amount of each bond, rate of interest thereon, date of maturity thereof, place or places of payment, and the number and denominations of attached coupons, together with any other proper data describing such bonds for the purpose of future identification thereof.

The treasurer shall be liable upon his official bond for any loss or damage suffered by the issuing corporation by reason of any delivery by him of any such bond in violation of the provisions of this section.

History.

1927, ch. 262, § 6, p. 546; I.C.A., § 55-219.

STATUTORY NOTES**Cross References.**

Registration, nominee registration act, bank or trust company acting as fiduciary, § 68-601 et seq.

Registration of bonds as to principal only, § 57-401 et seq.

Re-registration after discharge from registration, § 57-401.

Treasurer, filing list in recorder's office of all issued bonds, § 57-301.

RESEARCH REFERENCES

C.J.S. — 64A C.J.S., Municipal Corporations, § 2180.

57-220. Application of proceeds. — The proceeds of any such bonds shall not be applied to, or used for, any purpose or purposes, other than that

for which such bonds are issued, and such proceeds shall, until properly disbursed, be kept in a fund separate and apart from all proceeds of other bond issues and other funds of the issuing corporation; provided, however, that when, in the judgment of the governing board of the issuing corporation, the proceeds of any bond issue should be temporarily invested pending application of such proceeds to the purposes for which the bonds were issued, the governing board of the issuing corporation may invest the proceeds of such issue or any part thereof in registered securities of the United States. Any unexpended balance remaining after the accomplishment of such purpose or purposes shall be used and applied only to and for the payment and redemption of such bonds and the payment of interest thereon, pro tanto.

History.

1927, ch. 262, § 7, p. 546; I.C.A., § 55-220;
am. 1949, ch. 210, § 1, p. 444.

STATUTORY NOTES

Effective Dates.

Section 2 of S.L. 1949, ch. 210 declared an emergency. Approved March 14, 1949.

JUDICIAL DECISIONS

Bond Issue for Certain Purpose.

An ordinance calling for an election on proposed bond issue for the improvement of municipal water system justified city council carrying out mandate forthcoming from vot-

ers, who approved bond issue to carry out such work, but did not allow unlimited expenditures not properly connected therewith. *Durand v. Cline*, 63 Idaho 304, 119 P.2d 891 (1941).

RESEARCH REFERENCES

C.J.S. — 64A C.J.S., Municipal Corporations, § 2167.

57-221. Security. — The full faith and credit of the issuing corporation, and all taxable property within its limits, as constituted at the time of the issuance of such bonds, are, shall be, and must continue, pledged to the full and prompt payment of the principal and interest thereof. Should any tax for the payment of interest on any bonds issued under the provisions of this act at any time not be levied or collected in time to meet such payments, the interest on such bonds shall be paid out of the current expense, general expense or general fund of such issuing corporation, and the money so used for such payment of interest must thereafter be repaid to the fund from which so taken out of the first taxes collected for the payment of such interest.

History.

1927, ch. 262, § 8, p. 546; I.C.A., § 55-221.

STATUTORY NOTES

Compiler's Notes.

The term "this act" refers to S.L. 1927, ch. 262, which is compiled as §§ 31-1901, 31-1903, and 57-201 to 57-226.

RESEARCH REFERENCES

C.J.S. — 64A C.J.S., Municipal Corporations, § 2138.

57-222. Tax levies and sinking fund. — The governing board of the issuing corporation shall levy and cause to be levied annually at the time when and in the manner in which other general taxes of such issuing corporation are levied, upon all the taxable property within its limits, in addition to all other authorized taxes and assessments, a tax or assessment sufficient to meet the payments of principal and interest on such bonds as the same mature, and to constitute a sinking fund for the payment of the principal amount of said bonds within thirty (30) years from the time of contracting the indebtedness evidenced thereby and in accordance with the provisions made for the payment of the principal and interest of such bonds and also to constitute a sinking fund for the payment of the principal thereof, as theretofore provided by ordinance or by resolution and as required by the constitution and law of Idaho; and such taxes shall be levied, assessed, certified, extended and collected by the proper officers and at the times, all as fixed by law and as other taxes are levied, assessed, certified, extended and collected in, for and by the issuing corporation and by the same officers thereof until the principal and interest of all such bonds and interest thereon shall be fully paid. All of such taxes when collected shall be credited by the proper receiving officers to separate funds distinct from the funds for the payment of principal or interest on bonds of any other series or issue, and apart from any other funds of the issuing corporation.

History.

1927, ch. 262, § 9, p. 546; I.C.A., § 55-222; am. 1969, ch. 238, § 3, p. 753.

STATUTORY NOTES

Cross References.

Drainage district bond issues, sinking funds, §§ 42-2956, 42-3008.

Enforcement of laws relating to sinking fund levies, § 57-602.

Irrigation and drainage project bonds, Sinking funds, § 42-2812.

Irrigation district bonds, Sinking funds, § 43-413.

Sinking funds, miscellaneous provisions, § 57-601 et seq.

Effective Dates.

Section 4 of S.L. 1969, ch. 238 provided that the act should take effect on and after July 1, 1969.

JUDICIAL DECISIONS

Taxable Property Pledged.

The faith, credit and all taxable property

within the limits of a county as constituted at the time of such issue are, and must continue,

pledged to the payment of municipal bonds.
Shoshone County v. Profit, 11 Idaho 763, 84 P.
712 (1906).

RESEARCH REFERENCES

C.J.S. — 64A C.J.S., Municipal Corporations, §§ 2184 to 2190.

57-223. Separability. — Should any portion of this act for any reason be declared unconstitutional, invalid or ineffective, all other portions hereof which can be given effect shall remain in full force and effect notwithstanding such partial defect, it being the intent of this act that each portion hereof is adopted alone on its merits independent of each and every other portion.

History.

1927, ch. 262, § 20, p. 546; I.C.A., § 55-223.

STATUTORY NOTES

Compiler's Notes.

The term "this act" refers to S.L. 1927, ch. 262, which is compiled as §§ 31-1901, 31-1903, and 57-201 to 57-226.

57-224. Redemption. — The treasurer of the issuing corporation, upon presentation to him for payment of any legally issued and unpaid bond or coupon, on or after the date of maturity therein specified, shall redeem the same without any further warrant or order from the governing board of the issuing corporation, or any other officer thereof, but no bond shall be redeemed prior to maturity except upon the order of any such governing board. Said treasurer shall note in his bond register, in spaces therein provided for such purposes, the date of redemption and the amount of each bond or coupon by him redeemed from time to time, and shall indicate, by legibly perforating or stamping in ink on the face thereof, that each such bond or coupon has been redeemed and the date of payment, and shall, at the end of each month, or at such other time as he may be required by law to report to, or settle his accounts with, the governing board of the issuing corporation, or its auditor, clerk or secretary, surrender with such report or settlement the canceled coupons or bonds so redeemed as vouchers evidencing the payment thereof. It shall be the duty of the auditor, clerk or secretary of the issuing corporation, as the case may be, to enter in his bond register the date of payment and amount of each canceled coupon so surrendered to him by the treasurer, and in case any bond is redeemed prior to the ultimate maturity thereof, he shall ascertain that all unmatured coupons originally issued with any such bond are attached thereto at the time of redemption.

History.

1927, ch. 262, § 21, p. 546; I.C.A., § 55-224.

STATUTORY NOTES

Cross References.

Statement filed with county recorder thirty days after payment or redemption, § 57-301.

RESEARCH REFERENCES

C.J.S. — 64A C.J.S., Municipal Corporations, § 2186.

57-225. Bonds issued under former laws. — All bonds issued or authorized under the provisions of any law or laws herein amended, repealed or affected before the effective date of this act, and all proceedings relative to the same and to the redemption and payment thereof shall be governed and continue to be governed by the provisions of such law or laws and the same are hereby continued in force for such purpose notwithstanding the enactment of this act.

History.

1927, ch. 262, § 23, p. 546; I.C.A., § 55-225.

STATUTORY NOTES

Cross References.

Cities, previous issues validated, § 50-1021 (now repealed).

Compiler's Notes.

The phrase "the effective date of this act"

refers to the effective date of S.L. 1927, ch. 262, which was effective July 1, 1927.

The term "this act" refers to S.L. 1927, ch. 262, which is compiled as §§ 31-1901, 31-1903, and 57-201 to 57-226.

57-226. Effective date of act. — This act shall take effect and be in force from and after the first day of July, A.D. 1927.

History.

1927, ch. 262, § 24, p. 546; I.C.A., § 55-226.

STATUTORY NOTES

Compiler's Notes.

The term "this act" refers to S.L. 1927, ch.

262, which is compiled as §§ 31-1901, 31-1903, and 57-201 to 57-226.

57-227. Issuance and sale of bonds and securities to United States government — Interest rate. — Bonds and securities of all kinds heretofore or hereafter authorized, issued by any issuing corporation or district (hereinafter called the "issuer" and as hereinafter specified), whether such bonds and securities be issued for such issuer itself or for any other taxing or assessment district within its limits, and whether payable in whole or in part out of and from general taxes or payable in whole or in part out of and from the earnings to be derived from any utility, system, construction, work, or works, belonging to or operated by any such issuer, or payable in whole or in part out of and from "local" or "benefit" assessments upon lands within any assessment district or assessment subdivision within any such issuer, or payable from any other source, may be sold to the United

States Government or to any department, corporation or agency thereof or to any department, corporation, agency or body, created, organized or existing under or pursuant to any act of congress, by private sale without giving any prior notice thereof by publication or otherwise and in such manner as the governing authority of such issuer may provide; provided, only, that all bonds and securities sold and issued under the authority of this act shall be sold, if now required by existing law, at not less than par and accrued interest.

History.

1935 (1st E.S.), ch. 59, § 1, p. 160; am.
1970, ch. 133, § 19, p. 309.

STATUTORY NOTES**Compiler's Notes.**

The term "this act" near the end of the section refers to S.L. 1935 (1st E.S.), ch. 59, which is compiled as §§ 57-227 to 57-230.

The words enclosed in parentheses so appeared in the law as enacted.

57-228. Bonds — Amortized maturities. — It shall be proper to provide with respect to any bonds now required to be amortized or payable serially, that the annual maturities for the first five (5) maturities shall be of such annual principal amounts as may be fixed by any such governing authority, and that such amortized or serial annual maturities shall commence to be payable at any time on or before five (5) years after the date of said bonds, and that any bonds, or any part thereof, issued under the authority of this act, shall be redeemable prior to their fixed maturities and at the option of the issuer, as provided by the governing board or authority of any such issuer.

History.

1935 (1st E.S.), ch. 59, § 2, p. 160.

STATUTORY NOTES**Cross References.**

Maturity duration, Idaho Const., Art. VIII, § 3.

section refers to S.L. 1935 (1st E.S.), ch. 59, which is compiled as §§ 57-227 to 57-230.

Compiler's Notes.

The term "this act" near the end of the

57-229. "Issuer" defined. — The issuing corporations, districts, and subdivisions hereinbefore referred to and described as "issuer," shall include any county, city, village, school district, highway district, irrigation district, drainage district, taxing district, assessment district or any public corporation or municipal corporation authorized by existing law to issue bonds, securities or other evidences of indebtedness for itself or for any other taxing or assessment district therein or department thereof.

History.

1935 (1st E.S.), ch. 59, § 3, p. 160.

57-230. Powers of issuer. — It shall be optional with any such issuer, at its discretion, to exercise all or any of the powers conferred by this act in connection with the adoption and exercise by any such issuer of the provisions and powers granted by existing law.

History.

1935 (1st E.S.), ch. 59, § 4, p. 160.

STATUTORY NOTES

Compiler's Notes.

The term "this act" refers to S.L. 1935 (1st E.S.), ch. 59, which is compiled as §§ 57-227 to 57-230.

Effective Dates.

Section 5 of S.L. 1935 (1st E.S.), ch. 59 declared an emergency. Approved April 1, 1935.

57-231. Issuance of bonds by the state of Idaho or political subdivisions — Variable interest rates permitted — Credit enhancement arrangements. — Any other provision of law to the contrary notwithstanding, in the ordinance or resolution authorizing the issuance of any bonds, notes or other evidence of indebtedness otherwise permitted to be issued under the laws of the state of Idaho, the body charged with authorizing the issuance of such obligations for the state, its agencies, institutions, political subdivisions, cities, counties, school districts, irrigation districts, authorities, instrumentalities and municipal and quasi-municipal corporations now or hereafter existing under the laws of the state of Idaho, may specify either the rate or rates of interest, if any, on the bonds, notes or other evidences of indebtedness to be issued or may specify a method, formula or index pursuant to which the interest rate or rates on the bonds, notes or other evidences of indebtedness may be determined during the time such obligations are outstanding. Subject to the constitution, the resolution or ordinance may include the terms and conditions of arrangements which may be entered into by the issuer of such obligations with financial, banking and other institutions for letters of credit, standby letters of credit, reimbursement agreements and remarketing, indexing and tender agent agreements to secure such obligations, including payment from any legally available source of fees, charges or other amounts coming due under the agreements entered into in connection with the issuance of the obligations. Such arrangements need not be set forth in full in the resolution or ordinance, but may be incorporated by reference to the agreements entered into with the financial, banking or other institution.

History.

I.C., § 57-231, as added by 1984, ch. 261, § 1, p. 630.

STATUTORY NOTES

Compiler's Notes.

Section 2 of S.L. 1984, ch. 261 read: "The provisions of this act are hereby declared to be severable and if any provision of this act or

the application of such provision to any person or circumstance is declared invalid for any reason, such declaration shall not affect the validity of remaining portions of this act."

Effective Dates.

Section 3 of S.L. 1984, ch. 261 declared an emergency. Approved April 4, 1984.

57-232. Sale of bonds — Definition of private sale. — Whenever the term “private sale” appears in reference to the sale of bonds, notes or other obligations of any public entity of the state of Idaho, the term “private sale” means the sale of bonds, notes or other obligations pursuant to a written contract, and not to the award of sealed or electronic bids submitted at public sale. “Written contract” means a written contract between the issuer of the bonds, notes or other obligations, as seller, and the purchaser, which contract shall specify the principal amounts, maturities, interest rates, redemption provisions, if any, and other relevant terms of the sale.

History.

I.C., § 57-232, as added by 2001, ch. 264, § 5, p. 967.

STATUTORY NOTES**Compiler's Notes.**

S.L. 2001, ch. 208, § 30, effective July 1, 2001, and ch. 264, § 5, effective March 31, 2001, purported to enact a new section of chapter 2, title 57, Idaho Code, designated as § 57-232. Since § 57-232 as enacted by ch. 264, § 5 became effective first, it was compiled as § 57-232, and § 57-232 as enacted by ch. 208, § 30, was compiled as § 57-234

through the use of brackets. The redesignation of the provisions enacted by S.L. 2001, ch. 208 was made permanent by S.L. 2005, ch. 25.

Effective Dates.

Section 7 of S.L. 2001, ch. 264 declared an emergency. Approved March 31, 2001.

57-233. Sale of bonds — Electronic bidding. — Whenever a public entity is authorized to sell bonds, notes or other obligations at public sale, the governing body may, in its discretion, provide for the sale of such bonds, notes or other obligations pursuant to any system of electronic bidding which the governing body, in the exercise of its sound discretion, deems fair to potential bidders which produces the lowest effective interest rate to the issuer.

History.

I.C., § 57-233, as added by 2001, ch. 264, § 6, p. 967.

STATUTORY NOTES**Effective Dates.**

Section 7 of S.L. 2001, ch. 264 declared an emergency. Approved March 31, 2001.

57-234. Creation and perfection of government security interests. — (1) The revenues, fees, rents, charges, taxes or other property pledged by a governmental unit for the purpose of securing its bonds, which pledge is hereby authorized, are immediately subject to the lien of the pledge, and the lien shall be a perfected lien upon the effective date of the security agreement. No physical delivery of any security agreement or any

other act is required. Neither the security agreement nor a financing statement need be filed or recorded under the uniform commercial code or otherwise. The lien of any pledge is valid, binding, perfected and enforceable from the time the pledge is made. The lien of the pledge shall have priority based on the time of the creation of the pledge unless otherwise provided in the security agreement. The lien of the pledge shall have priority as against all parties having claims of any kind in tort, contract, or otherwise against the governing body, irrespective of whether the parties have notice of the lien. Each pledge and security agreement made for the benefit or security of any of the bonds shall continue to be effective until the principal, interest, and premium, if any, on the bonds have been fully paid or provision for payment has been made, or until the lien created by the security agreement has been released by agreement of the parties in interest or as provided by the security agreement that created the lien.

(2) As used in this section:

- (a) "Bonds" means any bond, note, lease or other obligation of a governmental unit;
- (b) "Governmental unit" has the meaning assigned in section 28-9-102, Idaho Code;
- (c) "Pledge" means the creation of a security interest of any kind;
- (d) "Property" means any property or interests therein, other than real property; and
- (e) "Security agreement" means any resolution, ordinance, indenture, document, or other agreement or instrument under which the revenues, fees, rents, charges, taxes or other property are pledged to secure the bonds.

(3) This section expressly governs the creation, perfection, priority and enforcement of a security interest created by the state or a governmental unit of the state, notwithstanding any provisions in chapter 9, title 28, Idaho Code, to the contrary.

History.

I.C., § 57-232, as added by 2001, ch. 208,

§ 30, p. 704; am. and redesign. 2005, ch. 25, § 119, p. 82.

STATUTORY NOTES

Compiler's Notes.

S.L. 2001, ch. 208, § 30, effective July 1, 2001, and ch. 264, § 5, effective March 31, 2001, purported to enact a new section of chapter 2, title 57, Idaho Code, designated as § 57-232. Since § 57-232 as enacted by ch. 264, § 5 became effective first, it was compiled as § 57-232, and § 57-232 as enacted by ch. 208, § 30, was compiled as § 57-234

through the use of brackets. The redesignation of the provisions enacted by S.L. 2001, ch. 208 was made permanent by S.L. 2005, ch. 25.

Effective Dates.

Section 31 of S.L. 2001, ch. 264 provided that the act should take effect on and after July 1, 2001.

CHAPTER 3

FILING OF LISTS OF BONDS

SECTION.

57-301. Treasurer to file lists in recorder's office — Contents — Statement upon redemption or payment of bond.

57-302. Summary of outstanding bonds to be included in recorder's financial statement.

SECTION.

57-303. Certification of amounts in bond redemption funds.

57-304. County recorder not to charge fees.

57-305. County auditor to keep information for reference.

57-306. Violation a misdemeanor.

57-301. Treasurer to file lists in recorder's office — Contents — Statement upon redemption or payment of bond. — The treasurer of every county, good road district, highway district, city, village, including all special improvement district bonds of cities and villages, school district, drainage district and irrigation district, shall file a list of all bonds of every kind which have heretofore been issued and are now outstanding as obligations of such political subdivision, and those which may hereafter be issued by any such political subdivision, in the office of the county recorder of the county in which such bonds have been or are issued. The treasurer of such political subdivision shall within sixty (60) days after the taking effect of this chapter, file [a] list of all such bonds in the office of the county recorder with the information as herein specified concerning such bonds; within thirty (30) days after the sale or delivery of any bonds issued by any such political subdivision herein enumerated after the taking effect of this chapter, the treasurer of such political subdivision shall file in the office of the county recorder a list of such bonds with the information as herein provided.

The lists of bonds herein required to be filed shall contain the following information: (a) the amount of the bond issued; (b) the purpose of the bond issue; (c) the dates of issuance; (d) the rate of interest; (e) length of time such bonds are to exist; (f) the serial numbers of the bonds; (g) a statement of the amount of bonded indebtedness outstanding.

When any bonds are redeemed or paid in any such political subdivision, the treasurer of such subdivision shall within thirty days after the payment of [or] redemption of such bonds, file in the office of the county recorder a statement showing the following facts: (a) the amount of bonds paid or redeemed; (b) designate what bonds were so paid or redeemed.

History.

1921, ch. 171, § 1, p. 366; am. 1925, ch. 132, § 1, p. 188; I.C.A., § 55-301.

STATUTORY NOTES

Cross References.

Liability of treasurer on official bond for

any loss or damage due to delivery of unregistered bond, § 57-219.

Compiler's Notes.

The phrase "the taking effect of this chapter," appearing twice in the first paragraph, refers to the taking effect of S.L. 1921, ch. 171, which was effective April 30, 1921.

The bracketed insertions in the first and last paragraphs were added by the compiler to make the sentences more readable.

JUDICIAL DECISIONS**Void Bonds Are Uncollectible.**

Municipal bonds issued in violation of constitutional prohibition are void and cannot become valid or collectible in the hands of

purchasers. *Village of Heyburn v. Security Sav. & Trust Co.*, 55 Idaho 732, 49 P.2d 258 (1935).

RESEARCH REFERENCES

C.J.S. — 64A C.J.S., Municipal Corporations, § 2180.

57-302. Summary of outstanding bonds to be included in recorder's financial statement. — It is hereby made the duty of the county recorder to include in the annual financial statement to the board of county commissioners, provided for in section 31-2307, Idaho Code, a classified summary of all outstanding bonds of the county and of each included bonded district and the total amount in the bond redemption funds of the county and of each included bonded district.

History.

1921, ch. 171, § 2, p. 366; am. 1925, ch. 132, § 2, p. 185; I.C.A., § 55-302.

57-303. Certification of amounts in bond redemption funds. — It shall be the duty of every county treasurer, not later than the second Monday in February of each year to certify to the county recorder of the same county the total amount in the county bond redemption [fund], and the total amount in the bond redemption funds of the included common school districts.

The treasurers of other included bonding units within the county shall certify to the county recorder of the county in which such bonding unit is situated, not later than the date before mentioned, the total amount in the bond redemption fund of such bonding units.

History.

1921, ch. 171, § 2a, as added by 1925, ch. 132, § 2A, p. 188; I.C.A., § 55-303.

STATUTORY NOTES**Cross References.**

Tax levy to provide sinking fund for redemption of county bonds, § 63-805.

graph was added by the compiler to supply an obviously missing term.

Compiler's Notes.

The bracketed insertion in the first para-

RESEARCH REFERENCES

C.J.S. — 64A C.J.S., Municipal Corporations, §§ 2186, 2187.

57-304. County recorder not to charge fees. — There shall be no fee charged by the county recorder for filing any such lists or making the copies for transmission to the board of county commissioners or for any other services herein required of the county recorder.

History. § 3, p. 185; I.C.A. § 55-304; am. 1994, ch. 1921, ch. 171, § 3, p. 366; am. 1925, ch. 132, 180, § 111, p. 420.

STATUTORY NOTES

Effective Dates. Section 241 of S.L. 1994, ch. 180 provided that such act should become effective on and after the first Monday in January, 1995 [January 2, 1995] if the amendment to the Constitution of Idaho changing the name of the state auditor to state controller [1994 S.J.R. No. 109, p. 1493] was adopted at the general election held on November 8, 1994. Since such amendment was adopted, the amendment to this section by § 111 of S.L. 1994, ch. 180 became effective January 2, 1995.

57-305. County auditor to keep information for reference. — The county auditor shall keep in some convenient form for reference, the information received from the various treasurers as herein provided.

History. § 4, p. 185; I.C.A., § 55-305; am. 1994, ch. 1921, ch. 171, § 4, p. 366; am. 1925, ch. 132, 180, § 112, p. 420.

STATUTORY NOTES

Effective Dates. Section 241 of S.L. 1994, ch. 180 provided that such act should become effective on and after the first Monday in January, 1995 [January 2, 1995] if the amendment to the Constitution of Idaho changing the name of the state auditor to state controller [1994 S.J.R. No. 109, p. 1493] was adopted at the general election held on November 8, 1994. Since such amendment was adopted, the amendment to this section by § 112 of S.L. 1994, ch. 180 became effective January 2, 1995.

57-306. Violation a misdemeanor. — Any person or officer violating any of the provisions of this chapter shall be deemed guilty of a misdemeanor.

History. 1921, ch. 171, § 5, p. 366; am. 1925, ch. 132, § 5, p. 185; I.C.A., § 55-306.

STATUTORY NOTES

Cross References. Penalty for misdemeanor when not otherwise provided, § 18-113.

CHAPTER 4

REGISTRATION OF COUPON BONDS

SECTION.

57-401. Registration as to principal only —
Discharge from registration.

57-402. Conversion into fully registered
bond.

SECTION.

57-403. Record of registered bonds.

57-404. Registration to be without cost to
holder.

57-401. Registration as to principal only — Discharge from registration. — Whenever the holder of any coupon bond, already issued or hereafter issued by the state of Idaho, or by any county, city, town, township, board of education, school district or other subdivision, now or hereafter existing in this state, shall present any such bond to the treasurer or other officer of the state or of such corporation, or subdivision, who by law performs the duties of treasurer, with a request for the registration of such bond as to principal only, in the name of such holder, it shall be the duty of such treasurer or such other official, to register such bond in the name of such holder, as to principal only, on the treasurer's books, which registration shall be similarly noted on the bond. After registration as to principal only, such bond may be discharged from registration by being transferred to bearer, after which it shall be transferable by delivery, but it may be again registered as before.

History.

1921, ch. 89, § 1, p. 167; I.C.A., § 55-401.

STATUTORY NOTES

Cross References.

Registration of bonds before issuance, § 57-219.

RESEARCH REFERENCES

C.J.S. — 64A C.J.S., Municipal Corporations, § 2180.

57-402. Conversion into fully registered bond. — The registration of such bond as to principal only shall not restrain the negotiability of the coupons by delivery merely, but upon presentation of any such bond to the treasurer or other official of the state or of such corporation, or subdivision, who by law performs the duties of treasurer, with a request for the conversion of such bond into a fully registered bond, such treasurer or such other official, shall cut off and cancel the coupons on any such coupon bonds so presented, and shall stamp, print or write upon such coupon bond, so presented, a statement to the effect that the coupon sheets issued with the bond have been surrendered by the holder of the bond, that the coupons have been canceled by the treasurer, or official acting as such, and that the interest on the bonds is to be paid to the registered holder or order upon the proper acknowledgment of the receipt thereof.

History.

1921, ch. 89, § 2, p. 167; I.C.A., § 55-402.

57-403. Record of registered bonds. — Such treasurer or such other official shall keep in his office, such book or books as may be necessary, so as to show at all times what bonds are registered as to principal only, and what bonds are registered as to both principal and interest.

History.

1921, ch. 89, § 3, p. 167; I.C.A., § 55-403.

57-404. Registration to be without cost to holder. — The registration of any coupon bond as to principal only, or as to both principal and interest, shall be effected by such treasurer or official performing the duties of treasurer without cost to the holder of any such coupon bond or bonds.

History.

1921, ch. 89, § 4, p. 167; I.C.A., § 55-404.

STATUTORY NOTES

Effective Dates.

Section 5 of S.L. 1921, ch. 89 declared an emergency. Approved March 14, 1921.

CHAPTER 5
ISSUANCE OF REFUNDING BONDS

SECTION.

- 57-501. Issuance of refunding bonds authorized.
57-502. Deposit of proceeds of refunding bonds — Limitations on use.

SECTION.

- 57-503. Payment and cancellation of outstanding bonds.
57-504. Advance refunding of bonds.

57-501. Issuance of refunding bonds authorized. — In all cases where the state or any county, city, village, school district, highway district, good roads district, irrigation district or drainage district, has issued and sold, or may hereafter issue and sell, its bonds and the same are outstanding and unpaid and which may under the laws of this state be refunded and called for payment, the state, county, school district, city, village, highway district, good roads district, irrigation district or drainage district having issued and sold said bonds, may refund the issue and sell refunding bonds in the manner provided by the law for the purpose of calling and paying said outstanding bonds, and may execute, sell and deliver said refunding bonds and receive the money therefor prior to or subsequent to calling for payment or paying and canceling the bonds so refunded, and such refunding bonds when so sold and delivered shall be legal and binding obligations of the state, county, school district, city, village, highway district, good roads district, irrigation district or drainage district issuing and selling the same.

History.

1931, ch. 190, § 1, p. 328; I.C.A., § 55-501.

STATUTORY NOTES

Cross References.

Cities, power to issue refunding bonds, § 50-1030. Facsimile signature of public officials, use on public securities, §§ 59-1018 to 59-1023.

RESEARCH REFERENCES

Am. Jur. — 64 Am. Jur. 2d, Public Securities and Obligations, §§ 198 to 200.

C.J.S. — 64A C.J.S., Municipal Corporations, §§ 2186, 2187.

57-502. Deposit of proceeds of refunding bonds — Limitations on use. — When such refunding bonds are so sold the money received therefor, if state bonds, shall be deposited with the state treasury, or if the bonds of any county, school district, city, village, highway district, good roads district, irrigation district or drainage district, with the treasurer of such county, school district, city, village, highway district, good roads district, irrigation district or drainage district, such money so received shall become a special fund, and shall not be used for any purpose other than the payment and retirement of the outstanding bond issue so refunded; provided, that any balance left over after said bond issue is entirely retired, paid and canceled, may be transferred to the bond interest and sinking fund of the state, county, school district, city, village, highway district, good roads district, irrigation district or drainage district.

History.

1931, ch. 190, § 2, p. 328; I.C.A., § 55-502.

57-503. Payment and cancellation of outstanding bonds. — As soon as said fund is so received and deposited, the state, county, school district, city, village, highway district, good roads district, irrigation district or drainage district shall immediately pay and cancel such bonds so refunded in the manner and with the effect provided by law for calling and paying such bonds.

History.

1931, ch. 190, § 3, p. 328; I.C.A., § 55-503.

STATUTORY NOTES

Effective Dates.

Section 5 of S.L. 1931, ch. 190 declared an emergency.

57-504. Advance refunding of bonds. — (1) Except where the context otherwise requires, the terms defined in this section shall for all purposes have the meanings herein specified:

- (a) "Governing body" means the council, commission, board of commissioners, board of directors, board of trustees, board of regents, or other legislative body of a public body designated herein in which body the legislative powers of the public body are vested.
- (b) "Public body" means the state of Idaho, its agencies, institutions,

political subdivisions, school districts, authorities, instrumentalities, and municipal and quasi-municipal corporations now or hereafter existing under the laws of the state of Idaho.

(c) "Bond" means any revenue bond or general obligation bond.

(d) "Revenue bond" means any bond, note, warrant, certificate of indebtedness, or other obligation for the payment of money issued by a public body or any predecessor of any public body and which is payable from designated revenues or a special fund but excluding any obligation constituting an indebtedness within the meaning of any applicable statutory debt limitation and any obligation payable solely from special assessments.

(e) "General obligation bond" means any bond, note, warrant, certificate of indebtedness, or other obligation of a public body which constitutes an indebtedness within the meaning of any applicable statutory debt limitation.

(f) "Advance refunding bonds" mean bonds issued for the purpose of refunding outstanding bonds in advance of their maturity.

(g) "Issuer" means the public body issuing any bond or bonds.

(h) "Ordinance" means an ordinance of a city or county or resolution or other instrument by which the governing body of the public body exercising any power hereunder takes formal action and adopts legislative provisions and matters of some permanency.

(i) "Government obligations" means [mean] direct obligations of the United States of America, or other securities, the principal and interest of which are unconditionally guaranteed by the United States of America.

(j) Words used herein importing singular or plural number may be construed so that one number includes both.

(2) The governing body of any public body may by ordinance provide for the issuance of bonds to refund outstanding bonds heretofore or hereafter issued by such public body or its predecessor, only: (1) to pay or discharge all or any part of such outstanding series or issue of bonds, including any interest thereon, in arrears or about to become due and for which sufficient funds are not available; or (2) to achieve a savings or other objective that the governing body finds to be beneficial to the public body. Any bonds issued for refunding purposes may be delivered in exchange for the outstanding bonds being refunded or may be sold in such manner and at such price as the governing body may in its discretion determine advisable. Such bonds may be issued without an election unless an election is required by the constitution of the state of Idaho.

(3) Advance refunding bonds may be issued in a principal amount in excess of the principal amount of the bonds to be refunded as determined by the governing body. Such amount may be equal to the full amount required to pay the principal of and interest on the bonds to be refunded to and including their dates of maturity or principal redemption in accordance with the advance refunding plan adopted by the governing body, together with all costs incurred in accomplishing such refunding. The principal amount of the refunding bonds may be less than or the same as the principal amount of the bonds being refunded so long as provision is duly and sufficiently made for

the retirement or redemption of such bonds to be refunded. Any reserves held to secure the bonds to be refunded may be applied to the redemption or retirement of such bonds, or otherwise as the governing body may determine.

(4) Prior to the application of the proceeds derived from the sale of advance refunding bonds to the purposes for which such bonds shall have been issued, such proceeds, together with any other legally available funds including reserve funds, may be invested and reinvested only in government obligations maturing at such time or times as may be required to provide funds sufficient to pay principal, interest and redemption premiums, if any, due in connection with the bonds to be refunded or the advance refunding bonds, or both, in accordance with the advance refunding plan. To the extent incidental expenses have been capitalized, such bond proceeds may be used to defray such expenses.

(5) The governing body may contract with respect to the safekeeping and application of the advance refunding bond proceeds and other funds included therewith and the income therefrom including the right to appoint a trustee which may be any trust company or state or national bank having powers of a trust company within or without the state of Idaho. The governing body may provide in the advance refunding plan that until such moneys are required to redeem or retire the bonds to be refunded, the refunding bond proceeds and other funds, and the income therefrom shall be used to pay and secure payment of principal of, interest on, and redemption premiums, if any, due in connection with all or a portion of the advance refunding bonds or the bonds being refunded, or both.

(6) In computing indebtedness for the purpose of any applicable statutory debt limitation there shall be deducted from the amount of outstanding indebtedness the principal amount of outstanding general obligation bonds for the payment of which there shall have been dedicated and deposited in escrow, government obligations the principal of or interest on which, or both, will be sufficient to provide for the payment of said general obligation bonds as to principal, interest and redemption premiums, if any, when due at maturity or upon some earlier date upon which such bonds shall have been called for redemption in accordance with their terms.

(7) When a public body has irrevocably set aside for and pledged to the payment of bonds to be refunded advance refunding bond proceeds and other moneys in amounts which together with known earned income from the investment thereof will be sufficient in amount to pay the principal of, interest on, and any redemption premiums on such bonds as the same become due and to accomplish the refunding as scheduled, such bonds shall be deemed duly paid and discharged for the purpose of any applicable statutory debt limitation.

(8) Bonds for refunding and bonds for any other purpose or purposes authorized may be issued separately or issued in combination in one or more series or issues by the same issuer.

(9) Except as specifically provided in this section, refunding bonds issued hereunder shall be issued in accordance with the provisions of law applicable to the type of bonds of the issuer being refunded, either at the time of the issuance of the refunding bonds or the bonds to be refunded.

(10) Refunding bonds may be made payable from any taxes or pledged revenues, or both, which might be legally pledged for the payment of the bonds being refunded at the time of the issuance of the advance refunding bonds or at the time of the issuance of the bonds being refunded, as the governing body may determine.

(11) The authority of a public body to issue refunding bonds pursuant to this section is additional to any existing authority to issue such bonds and nothing in this section shall prevent the issuance of such bonds pursuant to any other law, and this section shall not be construed to amend any existing law authorizing the issuance of refunding bonds by a public body.

(12) If any provision of this section, or its application to any person or circumstance is held invalid, the remainder of the section, or the application of the provision to other persons or circumstances is not affected.

History.

I.C., § 57-504, as added by 1977, ch. 237,
§ 1, p. 711.

OPINIONS OF ATTORNEY GENERAL

Idaho Const., Art. VIII, § 3, is not violated by issuance of refunding bonds which result in a net present value savings to a district without increasing the outstanding indebted-

ness of the district. The outstanding indebtedness is not increased by selling refunding bonds at a premium provided the premium is used for refunding purposes. OAG 90-8.

CHAPTER 6

SINKING FUNDS — MISCELLANEOUS PROVISIONS

SECTION.

- 57-601. Investment of sinking fund — Purchase of outstanding bonds.
- 57-601A. Income from investment of sinking fund.
- 57-602. Enforcement of laws relating to sinking fund levies and investment of sinking funds.

SECTION.

- 57-603. Wrongful disbursement from sinking fund — Liability of member or disbursing officer of taxing board — Enforcement.
- 57-604. Limitation on application of preceding section.

57-601. Investment of sinking fund — Purchase of outstanding bonds. — The treasurer of the state of Idaho, the city council or city commissioner of every city, the board of trustees of every village, the board of county commissioners of every county, the board of commissioners of every highway district, the board of trustees of every school district, the board of commissioners of every drainage district, the board of directors of every irrigation district, the board of trustees of every library district, and the governing board of every taxing district within the state of Idaho, whenever there is in any sinking fund, now existing or hereafter created by authority of the laws of the state, an amount in excess of the requirements to pay bonds maturing within the current year, shall, so far as practicable, invest the same in time certificates of deposit of public depositories, interest-bearing general obligation bonds, tax anticipation notes or treasury certificates lawfully issued by the United States of America, the state of Idaho, or any city, county, highway district, or school district in the state of

Idaho. The state or any city, village, county, highway district, school district, drainage district, irrigation district, library district, or any other taxing district in the state of Idaho may purchase for the sinking fund any bonds originally issued or assumed by it and keep the same alive in the sinking fund and resell the same, or any other investments of the sinking funds, when it may be deemed advisable to make more advantageous investments or to provide means for the redemption of maturing bonds; provided, that if any bonds so purchased are not necessary for the protection of any such sinking fund the governing board shall cause any such bonds together with the interest coupons thereon to be cancelled; provided, that whenever there is in any sinking fund of any irrigation district, now existing or hereafter created by authority of the laws of the state, an amount of funds in excess of the requirements to pay bonds maturing within the current year, such irrigation district may invest such excess moneys in any of the anticipation notes or warrants or other interest-bearing securities of such irrigation district; provided, further that any county hospital board may invest in short term interest-bearing bonds and other evidences of indebtedness of the United States, time certificates of deposit of public depositories or savings accounts insured by the federal deposit insurance corporation, to the extent of such insurance, whenever there are current expense funds in excess of requirements for the current year when it may be deemed advisable to put surplus current funds to work.

History.

1925, ch. 119, § 1, p. 167; am. 1929, ch. 123, § 1, p. 203; I.C.A., § 55-601; am. 1953, ch.

185, § 1, p. 295; am. 1957, ch. 221, § 1, p. 499; am. 1972, ch. 169, § 1, p. 418.

STATUTORY NOTES

Cross References.

Drainage and irrigation project bonds, sinking fund, § 42-2812.

Drainage district bonds, sinking fund, §§ 42-2956, 42-3008.

Facsimile signature of public officials, use on public securities, §§ 59-1018 to 59-1023.

Irrigation district bonds, safety fund, § 43-413.

State treasurer, § 67-1201 et seq.

Treasury note redemption fund, § 63-3105.

Effective Dates.

Section 2 of S.L. 1953, ch. 185 declared an emergency. Approved March 12, 1953.

Section 2 of S.L. 1957, ch. 221 declared an emergency. Approved March 15, 1957.

Section 2 of S.L. 1972, ch. 169 declared an emergency. Approved March 17, 1972.

JUDICIAL DECISIONS

Validation of Obligations.

Act validating actions, obligations, contracts and liabilities of highway district prior to 1927 did not validate unlawful purchase of

land bank bonds by highway district with its sinking funds. Filer Hwy. Dist. ex rel. Alworth v. Shearer, 54 Idaho 201, 30 P.2d 199 (1934).

RESEARCH REFERENCES

Am. Jur. — 63C Am. Jur. 2d, Public Funds, § 8.

C.J.S. — 64A C.J.S., Municipal Corporations, §§ 2184 to 2190.

57-601A. Income from investment of sinking fund. — Any income or profit that may be realized from the investment of the funds referred to

in section 57-601, Idaho Code, shall, as the same are received, be deposited to the sinking fund from which such excess funds were invested, and in no event shall any of such said income or profits from said investment be deposited to the general fund or any operating fund of such investing entity. Any member of any taxing board or any disbursing officer described in section 57-601, Idaho Code, who fails, refuses, or neglects to return the interest or income from investments to the proper sinking fund shall be proceeded against in the manner prescribed by section 57-603, Idaho Code.

History.

I.C., § 57-601A, as added by 1975, ch. 24,
§ 1, p. 39.

57-602. Enforcement of laws relating to sinking fund levies and investment of sinking funds. — Whenever it shall come to the knowledge of the attorney general that any political subdivision in the state has failed to levy proper sinking fund taxes as provided by law or contract, or that any of the sinking funds of any such political subdivision shall have been used, applied or invested contrary to law, he shall begin promptly and prosecute diligently, in the name of the state, appropriate legal action to compel said tax levies for current and future years and full compliance with the law regarding use, application and investment of sinking funds. This section shall not be construed to limit or abridge in any way the rights of holders of any bond or bonds issued by any political subdivision in the state.

History.

1925, ch. 140, § 1, p. 246; I.C.A., § 55-602.

STATUTORY NOTES

Cross References.

Attorney general, § 67-1401 et seq.

Sinking fund levies under municipal bond law, § 57-222.

57-603. Wrongful disbursement from sinking fund — Liability of member or disbursing officer of taxing board — Enforcement. — Any member of any taxing board, or any disbursing officer thereof, who shall vote for the expenditure of, or expend or disburse, any money from any sinking fund for any purpose other than that for which such fund was created, shall be personally liable, together with his bondsmen, for all money so paid out, disbursed or expended. The prosecuting attorney of the county in which such taxing district or any part thereof is situated shall, upon the demand of any taxpayer, commence a proper civil action against such person or persons and his or their bondsmen, and prosecute the same to final judgment for the purpose of collecting the full amount for which they are liable; and the amount of the judgment or any part thereof when collected shall be placed in the sinking fund from which such moneys were illegally taken.

History.

1929, ch. 159, § 1, p. 289; I.C.A., § 55-603.

57-604. Limitation on application of preceding section. — Section 57-603 shall not affect the right of taxing districts to invest sinking fund moneys pursuant to law.

History.

1929, ch. 159, § 2, p. 289; I.C.A., § 55-604.

CHAPTER 7

INVESTMENT OF PERMANENT ENDOWMENT AND EARNINGS RESERVE FUNDS

SECTION.

57-701 — 57-714. [Repealed.]

57-715. Permanent endowment funds declared to be trust funds.

57-716. Investment of proceeds of the sales of public lands.

57-717. Definitions.

57-718. Establishment of investment board — Members — Qualifications.

57-719. Board — Appointment of members — Term — Removal — Vacancies — Organization — Quorum — Meetings — Compensation.

57-720. Investment authority — Investment policies — Annual audit.

57-721. Management by manager of investments — Appointment of custodian.

57-722. Investment powers of investment

SECTION.

manager(s) — Limitations. [Repealed.]

57-723. Investment powers of the board — Application of Idaho uniform prudent investor act.

57-723A. Deposit and distribution of earnings reserve funds — Income funds — Administrative costs.

57-724. Determination of gains and losses.

57-724A. Earnings defined.

57-725. Reports to the state board of land commissioners.

57-726. Issuance of warrants by state controller covering investments by board. [Repealed.]

57-727. Manager of investments — Staff — Legal advisors.

57-728. Credit enhancement program for school district bonds.

57-701 — 57-714. Investment of permanent funds. [Repealed.]

STATUTORY NOTES

Compiler's Notes.

These sections, which comprised S.L. 1899, p. 439, § 1; 1905, p. 131, § 28; 1905, p. 377, § 1; R.C., §§ 1587, 1587a to 1587d, 1587i, 1587j, 1640, 1641; 1909, p. 373, § 1; reen. 1913, ch. 50, § 1, p. 159; reen. C.L., §§ 123:1 to 123:5, 123:10 to 123:17, 123:19; 1919, ch. 8,

§ 43, p. 67; C.S., §§ 2956 to 2960, 2965 to 2974; I.C.A., §§ 55-701 to 55-713, 55-715; 1933, ch. 133, § 1, p. 203; 1937, ch. 170, § 1, p. 278; 1939, ch. 58, § 1, p. 103; 1939, ch. 207, § 1, p. 423; 1963, ch. 157, § 1, p. 458, were repealed by S.L. 1969, ch. 244, § 1, p. 764.

57-715. Permanent endowment funds declared to be trust funds. — Permanent endowment funds of the state of Idaho are hereby declared to be trust funds of the highest and most sacred order and shall be controlled, managed and invested by the investment board and the investment manager(s) or custodian(s) in accordance with the highest standard, as directed by law and according to policies established by the state board of land commissioners, and as hereinafter provided.

History.

1969, ch. 244, § 2, p. 764; am. 1972, ch. 69, § 1, p. 140; am. 1998, ch. 256, § 33, p. 825.

STATUTORY NOTES

Cross References.

Investment board, § 57-718.

Investment of funds other than public endowment funds, § 67-1210.

Misuse of public money by public officers, penalty, § 18-5701.

Permanent endowment funds temporarily in hands of treasurer, § 67-2738.

Public officer making profit from public funds prohibited, Idaho Const., Art. VII, § 10.

Restrictions on loan of educational funds, Idaho Const., Art. IX, § 11.

State board of land commissioners, Idaho Const., Art. IX, § 7 and § 58-101 et seq.

Supervision of public investment excepted from powers of department of lands, § 58-119.

Compiler's Notes.

The letters "s" enclosed in parentheses so appeared in the law as enacted.

Section 63 of S.L. 1998, ch. 256 provided: "This act [which, in part, amended this section] shall be in full force and effect on and after July 1, 2000, provided the United States

Congress has approved amendments to Section 5 of the Idaho Admission Bill, 26 Stat. L. 215, ch. 656, regarding sale or lease of school lands; and the state board of canvassers has certified that amendments to Sections 3, 4, 8 and 11 of Article IX of the Constitution of the State of Idaho have been adopted at the general election of 1998 regarding funds related to the public school endowment, disposition of school lands, and investing of permanent endowment funds. Following the successful occurrence of the foregoing events, the governor shall issue a proclamation declaring that the described events have occurred and the dates of the events, and this act shall be in full force and effect on and after the date described. Upon enactment, the state controller shall transfer all fund balances from the improvement funds to the respective earnings reserve funds."

The contingencies that were required by S.L. 1998, ch. 256, section 63, for the 1998 amendment of this section to become effective on July 1, 2000, have been fulfilled.

JUDICIAL DECISIONS

ANALYSIS

General revenue state's property.

Interest on mortgages.

Powers of board.

General Revenue State's Property.

The state held the general revenue as distinguished from the common school fund as its own property and could enact such legislation applying to it as a statute of limitations as it saw fit. *United States v. Fenton*, 27 F. Supp. 816 (D. Idaho 1939).

Interest on Mortgages.

Regulation of board requiring payment of compound interest on mortgages given to secure a school fund loan was in violation of the

usury statutes and void. *State v. Fitzpatrick*, 5 Idaho 499, 51 P. 112 (1897).

Powers of Board.

The board did not possess plenary power, but only limited power, such as was given it by the legislature. *State v. Fitzpatrick*, 5 Idaho 499, 51 P. 112 (1897).

Cited in: *Parsons v. Diefendorf*, 53 Idaho 219, 23 P.2d 236 (1933); *Moon v. State Bd. of Land Comm'rs*, 111 Idaho 389, 724 P.2d 125 (1986).

OPINIONS OF ATTORNEY GENERAL

Legislation could be enacted authorizing the endowment fund investment board's use of covered call options; however, it would certainly be interpreted in light of the board's constitutional fiduciary obligations; those obligations are at least as great as those generally applied to fiduciaries in Idaho by § 68-502. OAG 88-1.

If covered call options were authorized, the board would need to establish policies ensuring that covered call options were not used in a speculative manner; however, they could be used as part of a general risk strategy related to the permanent disposition of endowment funds. OAG 88-1.

RESEARCH REFERENCES

C.J.S. — 64A C.J.S., Municipal Corporations, § 2095.

57-716. Investment of proceeds of the sales of public lands. — The proceeds of the sales of endowment lands of the state, if not deposited into the land bank fund established in section 58-133, Idaho Code, and used to purchase other lands, shall be deposited into the appropriate permanent endowment funds and must be invested for and on account of the specific purposes for which the lands were granted.

History.

1969, ch. 244, § 3, p. 764; am. 1998, ch. 256, § 34, p. 825.

STATUTORY NOTES

Cross References.

Duties of treasurer, § 67-1202.

Duty of state controller in relation to funds, § 67-1001.

Compiler's Notes.

Section 63 of S.L. 1998, ch. 256 provided: "This act [which, in part, amended this section] shall be in full force and effect on and after July 1, 2000, provided the United States Congress has approved amendments to Section 5 of the Idaho Admission Bill, 26 Stat. L. 215, ch. 656, regarding sale or lease of school lands; and the state board of canvassers has certified that amendments to Sections 3, 4, 8 and 11 of Article IX of the Constitution of the State of Idaho have been adopted at the

general election of 1998 regarding funds related to the public school endowment, disposition of school lands, and investing of permanent endowment funds. Following the successful occurrence of the foregoing events, the governor shall issue a proclamation declaring that the described events have occurred and the dates of the events, and this act shall be in full force and effect on and after the date described. Upon enactment, the state controller shall transfer all fund balances from the improvement funds to the respective earnings reserve funds."

The contingencies that were required by S.L. 1998, ch. 256, section 63, for the 1998 amendment of this section to become effective on July 1, 2000, have been fulfilled.

OPINIONS OF ATTORNEY GENERAL

When compared with the language of the other endowment statutes, § 67-1610 does not permit the deposit of proceeds from the sale of the lands comprising the capitol permanent endowment into the land bank. OAG 01-4.

Portion of § 58-133 which permits the de-

posit of proceeds from the sale of endowment land into the land bank is not mandatory; the land board has the discretion on a case-by-case basis to determine whether it is appropriate to place any eligible funds into the account. OAG 01-4.

RESEARCH REFERENCES

C.J.S. — 64A C.J.S., Municipal Corporations, § 2092.

57-717. Definitions. — The following words and phrases, when used in this chapter, shall, for the purposes of this chapter, have the meanings respectively ascribed to them in this section, except in those instances where the context clearly indicates a different meaning:

(1) "Board" and "investment board" mean the endowment fund investment board herein established.

(2) “Endowment fund” means the financial proceeds of lands granted to or acquired by the state by or from the general government and managed by the state board of land commissioners pursuant to section 8, article IX, of the constitution of the state of Idaho.

(3) “Income” means dividends and interest, which shall be distributable income within the meaning of this chapter.

History.

1969, ch. 244, § 4, p. 764; am. 1972, ch. 69, § 2, p. 140; am. 1974, ch. 22, § 51, p. 592; am. 2007, ch. 263, § 1, p. 779.

STATUTORY NOTES

Cross References.

State board of land commissioners, Idaho Const., Art. IX, § 7 and § 58-101 et seq.

Amendments.

The 2007 amendment, by ch. 263, twice substituted “this chapter” for “this act” in the introductory paragraph and once in subsection (3); substituted “and ‘investment board”

means the endowment fund” for “means the” in subsection (1); inserted subsection (2); and redesignated former subsection (2) as subsection (3).

Effective Dates.

Section 4 of S.L. 2007, ch. 263 declared an emergency. Approved March 29, 2007.

57-718. Establishment of investment board — Members — Qualifications. — There is hereby established in the state board of land commissioners an endowment fund investment board, hereinafter referred to as the “investment board.” This investment board shall consist of members hereinafter designated who shall be appointed by the governor subject to senate confirmation. The members of the investment board subject to appointment shall be: one (1) citizen with a minimum of ten (10) years’ broad experience in the field of public educational administration, one (1) member of the Idaho senate, one (1) member of the Idaho house of representatives, and six (6) public members from the citizenry at large who are knowledgeable and experienced in financial matters and the placement or management of investment assets.

History.

1969, ch. 244, § 5, p. 764; am. 1974, ch. 22, § 52, p. 592; am. 1975, ch. 244, § 1, p. 655; am. 1998, ch. 256, § 35, p. 825.

STATUTORY NOTES

Cross References.

State board of land commissioners, Idaho Const., Art. IX, § 7 and § 58-101 et seq.

Compiler’s Notes.

Section 63 of S.L. 1998, ch. 256 provided: “This act [which, in part, amended this section] shall be in full force and effect on and after July 1, 2000, provided the United States Congress has approved amendments to Section 5 of the Idaho Admission Bill, 26 Stat. L. 215, ch. 656, regarding sale or lease of school lands; and the state board of canvassers has certified that amendments to Sections 3, 4, 8 and 11 of Article IX of the Constitution of the State of Idaho have been adopted at the general election of 1998 regarding funds re-

lated to the public school endowment, disposition of school lands, and investing of permanent endowment funds. Following the successful occurrence of the foregoing events, the governor shall issue a proclamation declaring that the described events have occurred and the dates of the events, and this act shall be in full force and effect on and after the date described. Upon enactment, the state controller shall transfer all fund balances from the improvement funds to the respective earnings reserve funds.”

The contingencies that were required by S.L. 1998, ch. 256, section 63, for the 1998 amendment of this section to become effective on July 1, 2000, have been fulfilled.

57-719. Board — Appointment of members — Term — Removal — Vacancies — Organization — Quorum — Meetings — Compensation.

— The members of the board appointed by the governor shall serve for terms of four (4) years, provided that for the first term the governor shall appoint three (3) members who shall serve for a term of two (2) years, two (2) members who shall serve for a term of three (3) years, and two (2) members who shall serve for a term of four (4) years. Members of the board shall serve until their successors have been selected and qualified.

A member of the board appointed by the governor shall not hold an office, position, or employment in a political party, with the exception of those members from the house of representatives and the senate. An appointed member may be removed from the board for cause by a two-thirds (2/3) vote of the full board.

A vacancy in the appointive membership of the board during a term thereof shall be filled by appointment by the governor for the unexpired term.

There shall be a chairman of the board elected by a majority of the members of the board. A majority of the members of the board shall constitute a quorum for the transaction of business.

The meetings of the board shall be held at least quarterly and at other times upon the call of the chairman or a majority of the board. The board members appointed hereunder shall be compensated as provided by section 59-509(h), Idaho Code.

History.

1969, ch. 244, § 6, p. 764; am. 1975, ch. 244, § 2, p. 655; am. 1980, ch. 247, § 77, p. 582;

am. 1992, ch. 109, § 1, p. 338; am. 2000, ch. 65, § 1, p. 145; am. 2009, ch. 19, § 1, p. 45.

STATUTORY NOTES

Amendments.

The 2009 amendment, by ch. 19, deleted “for attending meetings of the board” from the end of the last paragraph.

Effective Dates.

Section 4 of S.L. 2000, ch. 65 provided that the act shall be in full force and effect on and after July 1, 2000.

57-720. Investment authority — Investment policies — Annual audit. — (1) The investment board or its investment manager(s) may, and are hereby authorized to, invest the permanent endowment funds and the earnings reserve funds of the state of Idaho and other moneys as required by law. The investment board may, with the approval of the state board of land commissioners, invest other funds that are exempt from section 67-1210, Idaho Code, provided however, that the costs of investment of such funds may be deducted by the investment board from investment proceeds.

(2) The funds invested by the investment board may be combined or pooled for investment.

(3) Earnings reserve funds shall be accounted for separately from permanent endowment funds.

(4) Prior to the annual calculation of gains and losses pursuant to section 57-724, Idaho Code, the investment board shall allocate the end of fiscal year market value between the permanent endowment funds and the

earnings reserve funds. This allocation shall be made based upon the proportion that the market value of the permanent endowment funds and the market value of the earnings reserve funds bear to the combined market value of both sets of funds, at the end of the fiscal year.

(5) The investment board shall formulate investment policies governing the investment of permanent endowment funds and earnings reserve funds and the investment of other funds accepted for investment by the investment board pursuant to subsection (1) of this section. The policies shall pertain to the types, kinds or nature of investment of any of the funds, and any limitations, conditions or restrictions upon the methods, practices or procedures for investment, reinvestments, purchases, sales or exchange transactions, provided such policies shall not conflict with nor be in derogation of any Idaho constitutional provision or of the provisions of this chapter.

(6) Annually, the investment board shall cause an audit to be conducted of the investment of permanent endowment funds and earnings reserve funds, such audit to be conducted by a recognized certified public accountant. The certified public accountant conducting the audit shall not be an employee of the state. The expense of such audit shall be paid from earnings reserve funds.

(7) The state treasurer shall invest the income funds of the respective endowment funds and distribute the moneys in the income funds according to legislative appropriation.

History.

1969, ch. 244, § 7, p. 764; am. 1972, ch. 69, § 3, p. 140; am. 1975, ch. 197, § 1, p. 549; am. 1998, ch. 256, § 36, p. 825; am. 2001, ch. 254,

§ 1, p. 919; am. 2004, ch. 96, § 1, p. 340; am. 2004, ch. 132, § 1, p. 450; am. 2007, ch. 263, § 2, p. 779.

STATUTORY NOTES

Cross References.

State treasurer, § 67-1201 et seq.

Amendments.

This section was amended by two 2004 acts which are compatible and have been compiled together.

The 2004 amendment, by ch. 96, added the designations to the section, added subsection (2), and substituted "policies" for "regulations" three times in subsection (5).

The 2004 amendment, by ch. 132, rewrote the first sentence in present subsection (4).

The 2007 amendment, by ch. 263, substituted "Investment Authority" for "Permanent Endowment Funds — Earnings Reserve Funds — Income funds" in the section heading; in subsection (1), added "and other moneys as required by law" at the end of the first sentence and added the second sentence; substituted "funds invested by the investment board" for "permanent endowment funds and the earnings reserve funds" in subsection (2); in subsection (5), added "and the investment of other funds accepted for investment by the

investment board pursuant to subsection (1) of this section" at the end of the first sentence and substituted "this chapter" for "this act" at the end; substituted "earnings reserve funds" for "the appropriation to the investment board" at the end of subsection (6); and inserted "funds" following "endowments" in subsection (7).

Compiler's Notes.

Section 63 of S.L. 1998, ch. 256 provided: "This act [which, in part, amended this section] shall be in full force and effect on and after July 1, 2000, provided the United States Congress has approved amendments to Section 5 of the Idaho Admission Bill, 26 Stat. L. 215, ch. 656, regarding sale or lease of school lands; and the state board of canvassers has certified that amendments to Sections 3, 4, 8 and 11 of Article IX of the Constitution of the State of Idaho have been adopted at the general election of 1998 regarding funds related to the public school endowment, disposition of school lands, and investing of permanent endowment funds. Following the

successful occurrence of the foregoing events, the governor shall issue a proclamation declaring that the described events have occurred and the dates of the events, and this act shall be in full force and effect on and after the date described. Upon enactment, the state controller shall transfer all fund balances from the improvement funds to the respective earnings reserve funds."

The contingencies that were required by

S.L. 1998, ch. 256, section 63, for the 1998 amendment of this section to become effective on July 1, 2000, have been fulfilled.

Effective Dates.

Section 4 of S.L. 2004, ch. 132 declared an emergency. Approved March 19, 2004.

Section 4 of S.L. 2007, ch. 263 declared an emergency. Approved March 29, 2007.

RESEARCH REFERENCES

C.J.S. — 64A C.J.S., Municipal Corporations, § 2092.

57-721. Management by manager of investments — Appointment of custodian. — (1) The investment board shall contract with or employ a manager of investments to manage the permanent endowment funds, the earnings reserve funds, and such other funds as the investment board is authorized to invest. The manager of investments who is employed or contracted with shall, subject to the direction of the investment board, exert control over the funds as though the manager of investments were the owner thereof.

(2) The investment board may select and contract with a minimum of one (1) bank or trust company to act as custodian of fund assets and provide safekeeping thereof.

History.

1969, ch. 244, § 8, p. 764; am. 1972, ch. 69, § 4, p. 140; am. 1997, ch. 162, § 1, p. 466; am.

1998, ch. 256, § 37, p. 825; am. 2000, ch. 65, § 2, p. 145; am. 2007, ch. 263, § 3, p. 779.

STATUTORY NOTES

Amendments.

The 2007 amendment, by ch. 263, deleted "of permanent endowment funds" following "Management" and following "custodian" in the section heading; added the subsection (1) and (2) designations; added "and such other funds as the investment board is authorized to invest" at the end of the first sentence in subsection (1); and deleted "endowment" following "custodian of" in subsection (2).

Compiler's Notes.

Section 63 of S.L. 1998, ch. 256 provided: "This act [which, in part, amended this section] shall be in full force and effect on and after July 1, 2000, provided the United States Congress has approved amendments to Section 5 of the Idaho Admission Bill, 26 Stat. L. 215, ch. 656, regarding sale or lease of school lands; and the state board of canvassers has certified that amendments to Sections 3, 4, 8 and 11 of Article IX of the Constitution of the State of Idaho have been adopted at the

general election of 1998 regarding funds related to the public school endowment, disposition of school lands, and investing of permanent endowment funds. Following the successful occurrence of the foregoing events, the governor shall issue a proclamation declaring that the described events have occurred and the dates of the events, and this act shall be in full force and effect on and after the date described. Upon enactment, the state controller shall transfer all fund balances from the improvement funds to the respective earnings reserve funds."

The contingencies that were required by S.L. 1998, ch. 256, section 63, for the 1998 amendment of this section to become effective on July 1, 2000, have been fulfilled.

Effective Dates.

Section 4 of S.L. 2000, ch. 65 provided that the act shall be in full force and effect on and after July 1, 2000.

Section 4 of S.L. 2007, ch. 263 declared an emergency. Approved March 29, 2007.

JUDICIAL DECISIONS

Custodial Rights.

The authority granted to the investment board by this section to select and contract with a bank or trust company to act as custodian of endowment fund assets does not deny

state treasurer the right to custody of public school endowment funds where that custodial right is claimed under Art. 9, § 3 of the Idaho Constitution. *Moon v. Investment Bd.*, 97 Idaho 595, 548 P.2d 861 (1976).

57-722. Investment powers of investment manager(s) — Limitations. [Repealed.]

STATUTORY NOTES

Compiler's Notes.

This section, which comprised 1969, ch. 244, § 9, p. 764; am. 1970, ch. 68, § 1, p. 162; am. 1971, ch. 99, § 1, p. 214; am. 1972, ch. 69, § 5, p. 140; am. 1975, ch. 197, § 2, p. 549; am.

1977, ch. 229, § 1, p. 682; am. 1984, ch. 226, § 1, p. 542; am. 1988, ch. 256, § 1, p. 495; am. 1990, ch. 203, § 1, p. 455; am. 1997, ch. 162, § 2, p. 466, was repealed by S.L. 1998, ch. 256, § 38, effective February 15, 1999.

57-723. Investment powers of the board — Application of Idaho uniform prudent investor act. — Any other sections of the Code notwithstanding, the investment board or its investment manager(s) or custodian(s) shall have the care and control of all investment instruments representing mortgages, bonds, warrants, investments and other securities in which the permanent endowment funds and earnings reserve funds of the state shall be invested.

The investment board and its investment manager(s) shall be governed by the Idaho uniform prudent investor act (chapter 5, title 68, Idaho Code), and shall invest and manage the assets of the respective trusts in accordance with that act and the Idaho constitution.

History.

1969, ch. 244, § 10, p. 764; am. 1972, ch. 69, § 6, p. 140; am. 1998, ch. 256, § 39, p. 825.

STATUTORY NOTES

Compiler's Notes.

The letters "s" and the reference enclosed in parentheses so appeared in the law as enacted.

by S.L. 1998, ch. 48, § 1, provided that the amendment to this section by S.L. 1998, ch. 256, § 39, should be in full force and effect on and after February 15, 1999.

Effective Dates.

Section 63 of S.L. 1998, ch. 256, as amended

OPINIONS OF ATTORNEY GENERAL

Legislation could be enacted authorizing the endowment fund investment board's use of covered call options; however, it would certainly be interpreted in light of the board's constitutional fiduciary obligations; those obligations are at least as great as those generally applied to fiduciaries in Idaho by § 68-502. OAG 88-1.

If covered call options were authorized, the board would need to establish policies ensuring that covered call options were not used in a speculative manner; however, they could be used as part of a general risk strategy related to the permanent disposition of endowment funds. OAG 88-1.

57-723A. Deposit and distribution of earnings reserve funds — Income funds — Administrative costs. — (1) As directed by the state board of land commissioners, the investment board shall distribute the earnings from the investments or securities in accordance with this act and the laws governing the respective endowment funds. Earnings from the investment of permanent endowment funds related to state land grants shall be deposited into each endowment's respective earnings reserve fund for distribution as provided in this section.

(2) At least annually, the state board of land commissioners shall distribute moneys constituting earnings reserve funds, in excess of the amount necessary to pay administrative costs, to the income funds of the respective endowments, to each endowment's respective permanent endowment fund or maintained as a free fund balance in the earnings reserve funds, in amounts to be determined by the state board of land commissioners.

(3) Moneys in the earnings reserve funds shall be available for appropriation by the legislature to pay for administrative costs incurred managing the assets of the endowments including, but not limited to, real property and monetary assets.

History.

I.C., § 57-723A, as added by 1998, ch. 256, § 40, p. 825.

STATUTORY NOTES

Cross References.

State board of land commissioners, Idaho Const., Art. IX, § 7 and § 58-101 et seq.

Compiler's Notes.

The term "this act" in the first sentence in subsection (1) refers to S.L. 1998, ch. 256, which is codified as §§ 20-101 to 20-103, 33-902 to 33-903, 33-2909 to 33-2914, 33-3301 to 33-3304, 57-715, 57-716, 57-718, 57-720, 57-721, 57-723 to 57-725, 58-104, 58-133, 58-316, and 66-1101 to 66-1105.

Section 63 of S.L. 1998, ch. 256 provided: "This act [which, in part, added this section] shall be in full force and effect on and after July 1, 2000, provided the United States Congress has approved amendments to Section 5 of the Idaho Admission Bill, 26 Stat. L. 215, ch. 656, regarding sale or lease of school lands; and the state board of canvassers has

certified that amendments to Sections 3, 4, 8 and 11 of Article IX of the Constitution of the State of Idaho have been adopted at the general election of 1998 regarding funds related to the public school endowment, disposition of school lands, and investing of permanent endowment funds. Following the successful occurrence of the foregoing events, the governor shall issue a proclamation declaring that the described events have occurred and the dates of the events, and this act shall be in full force and effect on and after the date described. Upon enactment, the state controller shall transfer all fund balances from the improvement funds to the respective earnings reserve funds."

The contingencies that were required by S.L. 1998, ch. 256, section 63, for the 1998 enactment of this section to become effective on July 1, 2000, have been fulfilled.

57-724. Determination of gains and losses. — (1) Gains. Gains to permanent endowment funds shall be determined by the investment board when the current market value of the permanent endowment fund as of the end of the fiscal year exceeds the gain benchmark market value of the permanent endowment fund. Gains for each permanent endowment fund shall be calculated as of June 30 of each fiscal year by subtracting the gain benchmark market value as of June 30 of such year, after all adjustments set out in this section, from the current market value of the permanent

endowment fund as of the same June 30 date. The gain benchmark market value shall begin with the market value of the permanent endowment fund calculated as it existed on June 30, 2000, and shall be adjusted cumulatively as of June 30 of each fiscal year thereafter for inflation during the preceding year based on the unadjusted consumer price index for all urban consumers as published by the United States department of labor, hereafter referred to in this section as "CPI-U," and further adjusted for certain deposits of funds into the permanent endowment fund during the preceding year, such adjustments to be calculated as follows:

(a) Inflation Adjustment. The gain benchmark market value shall be adjusted for inflation as of June 30 of each fiscal year by multiplying the gain benchmark market value as of the commencement of business on July 1 of the preceding calendar year by the sum of one (1) plus the percentage change in the average CPI-U for the fiscal year then ending. The percentage change in the average CPI-U shall be a fraction, the numerator of which is the average CPI-U for the fiscal year then ending less the average CPI-U for the preceding fiscal year, and the denominator of which is the average CPI-U for the preceding fiscal year. The average CPI-U for each fiscal year shall be calculated by dividing the sum of the monthly CPI-U index figures for such fiscal year, July through June, by twelve (12).

(b) Deposit of Funds. After adjustment for inflation, the gain benchmark market value shall be further adjusted by adding the amount of funds deposited into the permanent endowment fund from and including July 1 of the preceding calendar year through and including the June 30 date of adjustment, from any of the following sources:

- (i) Land sales proceeds not deposited into the land bank fund under section 58-133(2), Idaho Code;
- (ii) Funds transferred from the land bank fund after expiration of the time frame under section 58-133(3), Idaho Code;
- (iii) Mineral royalty payments; or
- (iv) Such other deposits into the permanent endowment fund as are required by law or otherwise permitted to be added to the permanent endowment fund except for the following:

- 1. Deposits to make up for losses to the permanent endowment fund;
- 2. Deposits of earnings reserves if the state board of land commissioners directs that such deposit not be added to the gain benchmark market value; or
- 3. Other deposits, including bequests, to the permanent endowment fund if the depositor or grantor thereof directs that the deposit not be added to the gain benchmark market value.

(c) Gain Benchmark Floor. Notwithstanding any other provision of this section, in no event shall the gain benchmark market value fall below the permanent corpus balance. For purposes of this subsection, the permanent corpus balance shall be calculated by adding to the permanent endowment fund balance as of June 30, 2000, all deposits to the permanent endowment fund up to and including the June 30 date of adjustment, other than deposits resulting from the investment activities of the

permanent endowment fund and deposits made to make up losses to the permanent endowment fund.

(2) Losses. Losses to permanent endowment funds shall be determined by the investment board when the market value of the permanent endowment fund as of the end of the fiscal year is less than the loss benchmark market value of the permanent endowment fund. The investment board shall calculate any annual loss as well as the cumulative loss for each permanent endowment fund as of June 30 of the fiscal year.

(a) Cumulative Loss. The cumulative loss for each permanent endowment fund shall be equal to the difference between the loss benchmark market value as of June 30 of the fiscal year, after all adjustments to the loss benchmark market value as set out below in this subsection (2), and the current market value of the permanent endowment fund as of the same June 30 date.

(b) Annual Loss. The annual loss for a fiscal year shall be equal to the increase, if any, of the cumulative loss as of June 30 of such fiscal year, compared to the cumulative loss as of June 30 of the preceding fiscal year.

(c) Loss Benchmark. The loss benchmark market value for each permanent endowment fund shall begin with the market value of the permanent endowment fund calculated as it existed on June 30, 2000, and shall be adjusted cumulatively as of June 30 of each fiscal year thereafter by adding the amount of funds deposited into the permanent endowment fund from and including July 1 of the preceding calendar year through and including the June 30 date of adjustment, from any of the following sources:

(i) Land sales proceeds not deposited into the land bank fund under section 58-133(2), Idaho Code;

(ii) Funds transferred from the land bank fund after expiration of the time frame under section 58-133(3), Idaho Code;

(iii) Mineral royalty payments; or

(iv) Such other deposits into the permanent endowment fund as are required by law or otherwise permitted to be added to the permanent endowment fund except for the following:

1. Deposits to make up for losses to the permanent endowment fund; and

2. Deposits of earnings reserves.

(d) Loss Recovery. Cumulative losses in permanent endowment funds other than the public school permanent endowment fund may be made up from earnings reserve fund moneys that the state board of land commissioners determines will not be needed for administrative costs or scheduled distributions to each endowment's respective income fund. Cumulative losses in the public school permanent endowment fund shall be made up as follows:

(i) The state board of land commissioners may transfer any funds in the public school earnings reserve fund that it determines will not be needed for administrative costs or scheduled distributions to the public school income fund in the following fiscal year to the public school permanent endowment fund, to make up for all or part of any then

existing cumulative losses in the public school permanent endowment fund.

(ii) If a cumulative loss exists in the public school permanent endowment fund as of the end of a fiscal year, and there has also been a cumulative loss at the end of each of the preceding nine (9) fiscal years, for a total of ten (10) consecutive fiscal years ending with a cumulative loss, then, to the extent the then existing cumulative loss is not made up from transfers of earnings reserves under subsection (2)(d)(i) of this section, the legislature shall, by legislative transfer or appropriation authorized during one (1) or both of the next succeeding two (2) regular sessions of the legislature, authorize a deposit to the public school permanent endowment fund in an amount equal to the lesser of:

1. The current cumulative loss; or
2. An amount not less than the annual loss determined in the first year of the preceding ten (10) consecutive fiscal years, provided however, the legislature may offset the amount of this annual loss by any deposits of earnings reserves made by the land board into the public school permanent endowment fund after the end of the fiscal year for which such annual loss was calculated, but only to the extent any such deposit of earnings reserves has not been used previously to offset the amount of a prior legislative deposit under this subparagraph 2.

(iii) The deposit of any transfer or appropriation authorized by the legislature under subsection (2)(d)(ii) of this section shall take place after the end of the fiscal year in which the deposit was authorized by the legislature, and as soon as is practicable once the investment board has calculated the cumulative loss in the public school permanent endowment fund as of the end of the fiscal year; provided however, in the event the cumulative loss as of the end of such fiscal year is less than the amount of the authorized deposit, the deposit shall be reduced to an amount equal to the cumulative loss, and the balance of the authorized deposit shall be returned to the source of the deposit.

History.

I.C., § 57-724, as added by 1998, ch. 256, § 42, p. 825; am. 2001, ch. 254, § 2, p. 919;

am. 2004, ch. 132, § 2, p. 450; am. 2006, ch. 43, § 1, p. 130.

STATUTORY NOTES

Cross References.

Public school permanent endowment fund, Idaho Const., Art. IX, § 4 and § 33-902.

the section, clarifying the calculation of gains and losses to the state's endowment funds and clarifying the mechanism for recovery of losses to the endowment.

Prior Laws.

Former § 57-724, which comprised 1969, ch. 244, § 11, p. 764; am. 1970, ch. 68, § 2, p. 162; am. 1972, ch. 69, § 7, p. 140; am. 1975, ch. 197, § 3, p. 549; am. 1984, ch. 226, § 2, p. 542, was contingently repealed by S.L. 1998, ch. 256, § 41, effective July 1, 2000.

Compiler's Notes.

For more on the consumer price index, see <http://www.bls.gov/cpi>.

Section 63 of S.L. 1998, ch. 256 provided: "This act [which, in part, added this section] shall be in full force and effect on and after July 1, 2000, provided the United States Congress has approved amendments to Section 5 of the Idaho Admission Bill, 26 Stat. L. 215,

Amendments.

The 2006 amendment, by ch. 43, rewrote

ch. 656, regarding sale or lease of school lands; and the state board of canvassers has certified that amendments to Sections 3, 4, 8 and 11 of Article IX of the Constitution of the State of Idaho have been adopted at the general election of 1998 regarding funds related to the public school endowment, disposition of school lands, and investing of permanent endowment funds. Following the successful occurrence of the foregoing events, the governor shall issue a proclamation declaring that the described events have occurred and the dates of the events, and this act shall be in full force and effect on and after the date described. Upon enactment, the state controller shall transfer all fund balances from the improvement funds to the respective earnings reserve funds."

The contingencies that were required by S.L. 1998, ch. 256, section 63, for the 1998 amendment of this section to become effective on July 1, 2000, have been fulfilled.

Section 2 of S.L. 2006, ch. 43 provided "An emergency existing therefore, which emergency is hereby declared to exist, the calculation of gain benchmark market value and loss benchmark value set forth in this act shall be in full force and effect on and after its passage and approval, and shall be retroactive to June 30, 2000, and shall replace and supersede any prior calculation thereof."

Effective Dates.

Section 4 of S.L. 2004, ch. 132 declared an emergency. Approved March 19, 2004.

57-724A. Earnings defined. — "Earnings" shall mean all revenues generated from the management of endowment lands and their related endowment funds including, but not limited to, timber sale proceeds, lease fees, interest, dividends, and gains as defined in section 57-724, Idaho Code; provided however, for the permanent fund of each endowment, on and after July 1 of the calendar year following the first calendar year in which gains, as calculated under the provisions of section 57-724, Idaho Code, have been achieved by the permanent fund of such endowment fund, dividends and interest shall be incorporated into the calculation of gains as defined in section 57-724, Idaho Code, and shall not be a separate item of earnings for such permanent fund. "Earnings" does not include mineral royalties or land sale proceeds.

History.

I.C., § 57-724A, as added by 1998, ch. 256,

§ 43, p. 825; am. 2001, ch. 254, § 3, p. 919; am. 2006, ch. 44, § 2, p. 133.

STATUTORY NOTES

Amendments.

The 2006 amendment, by ch. 44, inserted "provided however, for the permanent fund of each endowment, on and after July 1, of the calendar year following the first calendar year in which gains, as calculated under the provisions of section 57-724, Idaho Code, have been achieved by the permanent fund of such endowment fund, dividends and interest shall be incorporated into the calculation of gains as defined in section 57-724, Idaho Code, and shall not be a separate item of earnings for such permanent fund" at the end of the first sentence.

Compiler's Notes.

Section 63 of S.L. 1998, ch. 256 provided: "This act [which, in part, added this section] shall be in full force and effect on and after July 1, 2000, provided the United States Congress has approved amendments to Section 5 of the Idaho Admission Bill, 26 Stat. L. 215, ch. 656, regarding sale or lease of school

lands; and the state board of canvassers has certified that amendments to Sections 3, 4, 8 and 11 of Article IX of the Constitution of the State of Idaho have been adopted at the general election of 1998 regarding funds related to the public school endowment, disposition of school lands, and investing of permanent endowment funds. Following the successful occurrence of the foregoing events, the governor shall issue a proclamation declaring that the described events have occurred and the dates of the events, and this act shall be in full force and effect on and after the date described. Upon enactment, the state controller shall transfer all fund balances from the improvement funds to the respective earnings reserve funds."

The contingencies that were required by S.L. 1998, ch. 256, section 63, for the 1998 amendment of this section to become effective on July 1, 2000, have been fulfilled.

This section was amended by S.L. 2004, ch. 132, § 3, contingent upon a certain certifica-

tion to the secretary of state. The 2004 amendment was repealed by section 1 of S.L. 2006, ch. 44 before ever going into effect.

57-725. Reports to the state board of land commissioners. — The investment board shall make reports to the state board of land commissioners as directed by the state board of land commissioners.

History.
1969, ch. 244, § 12, p. 764; am. 1972, ch. 69, § 8, p. 140; am. 1975, ch. 197, § 4, p. 549; am.

1997, ch. 162, § 3, p. 466; am. 1998, ch. 256, § 44, p. 825.

STATUTORY NOTES

Cross References.
State board of land commissioners, Idaho Const., Art. IX, § 7 and § 58-101 et seq.

Compiler's Notes.
Section 63 of S.L. 1998, ch. 256 provided: "This act [which, in part, amended this section] shall be in full force and effect on and after July 1, 2000, provided the United States Congress has approved amendments to Section 5 of the Idaho Admission Bill, 26 Stat. L. 215, ch. 656, regarding sale or lease of school lands; and the state board of canvassers has certified that amendments to Sections 3, 4, 8 and 11 of Article IX of the Constitution of the State of Idaho have been adopted at the general election of 1998 regarding funds re-

lated to the public school endowment, disposition of school lands, and investing of permanent endowment funds. Following the successful occurrence of the foregoing events, the governor shall issue a proclamation declaring that the described events have occurred and the dates of the events, and this act shall be in full force and effect on and after the date described. Upon enactment, the state controller shall transfer all fund balances from the improvement funds to the respective earnings reserve funds."

The contingencies that were required by S.L. 1998, ch. 256, section 63, for the 1998 amendment of this section to become effective on July 1, 2000, have been fulfilled.

JUDICIAL DECISIONS

Cited in: Moon v. Investment Bd., 96 Idaho 140, 525 P.2d 335 (1974).

57-726. Issuance of warrants by state controller covering investments by board. [Repealed.]

STATUTORY NOTES

Compiler's Notes.
This section, which comprised 1969, ch. 244, § 13, p. 764; am. 1972, ch. 69, § 9, p.

140; am. 1974, ch. 22, § 53, p. 592; am. 1994, ch. 180, § 113, p. 420, was repealed by S.L. 2003, ch. 32, § 1, effective July 1, 2003.

57-727. Manager of investments — Staff — Legal advisors. — (1) With the approval of two-thirds (2/3) of the members of the board, a manager of investments and other portfolio managers may be employed or contracted with who shall perform such managerial activities and functions as the board may direct. The manager of investments and portfolio managers shall serve at the pleasure of the board in nonclassified positions, if such persons are employees. The manager of investments and portfolio managers may either be employed by the board or serve pursuant to contract. The salary or compensation of the manager of investments and portfolio managers shall be set by the board, subject to approval of the governor, and be

paid from appropriations made therefor. The manager of investments and portfolio managers shall be bonded in an amount established by the board if these persons are employees. If these functions are performed pursuant to contract, the contract shall contain a clause to provide for bonding of the contractor's personnel.

(2) The board may authorize the employment of whatever staff it deems necessary for the administration of the board's business. The manager of investments may hire portfolio managers and other necessary staff who shall hold their respective positions subject to the rules of the administrator of the division of human resources promulgated pursuant to chapter 52, title 67, Idaho Code. The salaries of all staff members shall be paid from appropriations made therefor.

(3) The director of the department of finance shall have access to any and all books and records maintained by the manager of investments and his staff as the board may deem necessary.

(4) The board shall be furnished adequate and qualified legal advisors by the attorney general's office.

(5) All current expenses, capital outlay, and travel expenses shall be paid from appropriations made therefor.

(6) The board shall, upon request of the agency involved, furnish advice to the treasurer, the manager of the state insurance fund, and the public employee retirement board, and the board may, upon request of the agency, invest funds of the requesting agency.

History.

I.C., § 57-727, as added by 1971, ch. 262, § 1, p. 1060; am. 1974, ch. 22, § 54, p. 592; am. 1975, ch. 244, § 3, p. 655; am. 1977, ch.

206, § 1, p. 570; am. 1977, ch. 229, § 2, p. 682; am. 1986, ch. 68, § 1, p. 193; am. 1997, ch. 162, § 4, p. 466; am. 1999, ch. 370, § 24, p. 976; am. 2000, ch. 65, § 3, p. 145.

STATUTORY NOTES

Cross References.

Attorney general, § 67-1401 et seq.

Director of department of finance, § 67-2701.

Division of human resources, § 67-5301.

Public employee retirement board, §§ 59-1304, 59-1305.

State insurance fund, § 72-901 et seq.

Effective Dates.

Section 2 of S.L. 1971, ch. 262 declared an emergency. Approved March 25, 1971.

Section 61 of S.L. 1974, ch. 22 provided that

the act should take effect on and after July 1, 1974.

Section 4 of S.L. 1975, ch. 244 provided that the act should take effect on and after July 1, 1975.

Section 2 of S.L. 1977, ch. 206 declared an emergency. Approved March 30, 1977.

Section 3 of S.L. 1977, ch. 229 declared an emergency. Approved March 31, 1977.

Section 4 of S.L. 2000, ch. 65 provided that the act shall be in full force and effect on and after July 1, 2000.

JUDICIAL DECISIONS

ANALYSIS

Attorney general.

Jurisdiction over the state.

Attorney General.

Where trust property intended for the use of a public charity was not being properly applied, the attorney general was without

power to commence and maintain a suit to protect such charity. *Hedin v. Westdala Lutheran Church*, 59 Idaho 241, 81 P.2d 741 (1938).

The attorney general was to foreclose any delinquent mortgage when directed by the department and to look after and care for the state's interest in every stage of the proceedings until finally determined. *Howard v. Cook*, 59 Idaho 391, 83 P.2d 208 (1938).

Under a statute authorizing attorney general to exercise supervisory powers over prosecuting attorneys, attorney general was paramount in control and direction of prosecuting attorneys. Whatever the prosecuting attorneys could do, the attorney general could also do, and since the prosecuting attorney could appear before a grand jury in his county the attorney general or his depu-

ties could likewise appear. *State v. Taylor*, 59 Idaho 724, 87 P.2d 454 (1939).

Jurisdiction Over the State.

In action against state to quiet title to a decreed water right, attorney general had right and authority to file a cross-complaint, and, thereafter, the court had jurisdiction over the state for purposes of granting or denying the relief prayed for by the state in its cross-complaint, regardless of whether plaintiff could sue the state without state's consent. *Howard v. Cook*, 59 Idaho 391, 83 P.2d 208 (1938).

57-728. Credit enhancement program for school district bonds.

— (1) The endowment fund investment board shall administer a school district bond credit enhancement program in accordance with this section and in conjunction with chapter 53, title 33, Idaho Code. This program applies to voter approved bonds issued by school districts. The program is intended to benefit school districts by authorizing the board to purchase notes issued by the state of Idaho for the purpose of making debt service payments under the Idaho school bond guaranty program established in chapter 53, title 33, Idaho Code.

(2) The board shall promulgate rules to implement the program. Rules may include the imposition of guaranty and administrative fees upon school districts participating in the program. Rules shall include:

(a) The application materials school districts must provide to the board; and

(b) The application procedures, submission deadlines, and the time periods for review and approval or denial of an application.

(3) A school district that seeks credit enhancement under this program shall first apply to the state treasurer to participate in the Idaho school bond guaranty program established in chapter 53, title 33, Idaho Code. If approved to participate in the Idaho school bond guaranty program, a school district may apply for credit enhancement, as provided in section 33-5310, Idaho Code. The board shall approve or deny applications as set forth in rule but not longer than twenty (20) days following the submission of a complete application to the board. Nothing contained herein shall prohibit a school district from reapplying following a rejected application.

(4) Upon approval of a school district's application to participate in the credit enhancement program, the following shall be in effect in the event moneys from the sales tax account or from the provisions of section 33-5309, Idaho Code, are insufficient to pay a debt service payment under the Idaho school bond guaranty program:

(a) The board may purchase on behalf of the public school [permanent] endowment fund, or from other funds administered by the board, notes from the state issued by the state treasurer, in accordance with section 33-5308, Idaho Code, under such terms as are negotiated between the board and the state treasurer; or

(b) Upon the request of the state treasurer pursuant to section 33-5308,

Idaho Code, the board shall purchase on behalf of the public school [permanent] endowment fund notes issued by the state treasurer, the proceeds of which shall be sufficient to pay the debt service payments as they become due.

(5) Notes purchased by the board pursuant to subsection (4)(b) of this section shall be subject to the following terms and conditions:

(a) The notes shall bear interest at a rate equal to the annual rate of one (1) year treasury bills, as published by the federal reserve board as of the date of the request of the state treasurer, plus four hundred (400) basis points, plus, for the first six (6) months of the term of the note, an amount, as determined by the board, up to a maximum of fifty (50) basis points, to cover all additional administrative and transaction costs related to the purchase of the notes;

(b) The notes will have a maximum term of one (1) year, and may be renewed at the request of the state treasurer;

(c) The notes, including principal and interest, shall be repaid from the school district's next payments pursuant to section 33-5307, Idaho Code, as collected by the state treasurer;

(d) The state may make additional payments on the note;

(e) The board may require the state treasurer to compel the school district to modify its fiscal practices and its general operations if the board determines that there is a substantial likelihood that the school district will not be able to make future payments required under this section.

(6) The provisions of this section shall not be deemed to interfere with the state treasurer's ability in chapter 53, title 33, Idaho Code, to obtain repayment of a delinquent obligation.

(7) For purposes of administering the provisions of this section, the board shall make available the sum of two hundred million dollars (\$200,000,000) from the public school [permanent] endowment fund, for purposes of purchasing notes as authorized by this section. Nothing in this section shall require the board to hold at any time in excess of two hundred million dollars (\$200,000,000) in notes issued pursuant to the credit enhancement program. The principal amount of bonds guaranteed by the credit enhancement program shall not be greater than four (4) times the amount made available by the board from the public school permanent endowment fund for the purpose of purchasing notes.

(8) On and after the effective date of this section, the aggregate principal amount of school district bonds outstanding that may be guaranteed by the credit enhancement program shall not exceed twenty million dollars (\$20,000,000) per school district. Notwithstanding this maximum limit, credit enhancement of bond guaranties for bonds issued prior to July 1, 2007, exceeding the twenty million dollar (\$20,000,000) maximum limit shall remain in effect. In the event school districts consolidate, the maximum credit enhancement of the bonds of the newly consolidated school district shall be the sum of the maximum limit of each school district participating in the consolidation. The state treasurer shall monitor the principal amounts of each school district participating in the credit enhancement program and provide such information to the board.

History.

I.C., § 57-728, as added by 1999, ch. 328, § 3, p. 840; am. 2002, ch. 147, § 1, p. 424; am.

2003, ch. 269, § 1, p. 719; am. 2007, ch. 89, § 1, p. 243; am. 2009, ch. 185, § 6, p. 601.

STATUTORY NOTES

Cross References.

Sales tax account, § 63-3623.
State treasurer, § 67-1201 et seq.

Amendments.

The 2007 amendment, by ch. 89, substituted “four (4) times the amount” for “three (3) times the amount” in subsection (5).
The 2009 amendment, by ch. 185, rewrote the section to the extent that a detailed comparison is impracticable.

Compiler’s Notes.

The bracketed insertions in paragraphs (4)(a) and (4)(b) and subsection (7) were added by the compiler to correct the name of the

referenced fund. See Idaho Const., Art. IX, § 4 and § 33-902.
The phrase “the effective date of this section” in subsection (8) refers to the effective date of the amendment of this section by S.L. 2009, ch. 185, which was effective April 17, 2009.

Effective Dates.

Section 4 of S.L. 1999, ch. 328 declared an emergency. Approved March 24, 1999.
Section 2 of S.L. 2002, ch. 147 declared an emergency. Approved March 20, 2002.
Section 2 of S.L. 2003, ch. 268 declared an emergency. Approved April 8, 2003.
Section 7 of S.L. 2009, ch. 185 declared an emergency. Approved April 17, 2009.

JUDICIAL DECISIONS

Constitutionality.

Where the 1998 constitutional amendments to Idaho Const., Art. IX, §§ 3 and 11 were related as part of a common scheme for funding education, the joint submission of the amendments to the electorate on a single ballot was constitutional, and the subse-

quently enacted Idaho School Bond Guaranty Act, ch. 53, title 33, Idaho Code, and related statutory enactments or amendments by S.L. 1999, ch. 328 were upheld. State Endowment Fund Inv. Bd. v. Crane, 135 Idaho 667, 23 P.3d 129 (2001).

CHAPTER 8
FUNDS CONSOLIDATION ACT

SECTION.

- 57-801 — 57-811. [Repealed.]
- 57-812. Consolidation into rotary fund.
- 57-813. Catastrophic health care cost account.
- 57-814. Budget stabilization fund.
- 57-814A. Transfer from budget stabilization fund to general fund.
- 57-815. Idaho ag in the classroom.
- 57-816. Drug and driving while under the influence enforcement donation fund.

SECTION.

- 57-817. United States olympic account.
- 57-818. Equine education account.
- 57-819. Alzheimer’s disease services account.
- 57-820. The Idaho guard and reserve family support fund.
- 57-821. American red cross of greater Idaho fund.
- 57-822. INL settlement fund.
- 57-823. Special olympics Idaho fund.
- 57-824. Idaho food bank fund.

57-801 — 57-803A. Title — Statement of policy — Funds recognized or established — Accounting classification structure as established by the state auditor. [Repealed.]

STATUTORY NOTES

Prior Laws.

Former §§ 57-801 to 57-808, which comprised R.C., § 1587b, as added by 1909, p.

373, § 1; compiled and reen. C.L. 123:20 to 123:27; 1917, ch. 80, §§ 1 to 5, p. 251; C.S., §§ 2975 to 2982; am. 1923, ch. 119, § 1, p.

152; I.C.A., §§ 55-801 to 55-808 were repealed by S.L. 1976, ch. 51, § 1, effective July 1, 1977.

§§ 57-801 to 57-803, as added by 1976, ch. 51, § 2, p. 152; I.C., § 57-803A, as added by 1989, ch. 201, § 1, p. 501; 1985, ch. 195, § 1, p. 497, were repealed by S.L. 1991, ch. 51, § 1.

Compiler's Notes.

These sections, which comprised, I.C.,

57-804 — 57-811. Consolidation into state operating fund, dedicated fund, trust and agency fund, institutions' endowment fund, endowment earning fund, debt service fund, employment security administration and agency asset fund. [Repealed.]

STATUTORY NOTES

Prior Laws.

Former §§ 57-804 to 57-808, which comprised 1917, ch. 80 §§ 1 to 5, pp. 251-252; reen. C.L. 123:23 to 123:27; C.S. §§ 2978 to 2982; I.C.A. §§ 55-804 to 55-808, were repealed by S.L. 1976, ch. 51, § 1, effective July 1, 1977.

Compiler's Notes.

These sections, which comprised I.C., §§ 57-804 to 57-811, as added by 1976, ch. 51, § 2, p. 152; am. 1977, ch. 99, § 2, p. 207; am. 1981, ch. 216, § 1, p. 398, were repealed by S.L. 1985, ch. 195, § 2.

57-812. Consolidation into rotary fund. — (1) Those accounting entities on the records of the state controller and state treasurer, commonly referred to as "rotary funds," but which are not recognized or created by law, may be consolidated into the rotary fund as accounts by the state controller, utilizing such numbering and identification sequence as fits the needs of the state's accounting system.

(2) All financial transactions of the rotary fund, including the receipt of moneys and payments by warrant, shall be maintained on the account level within the rotary fund. The state controller and the state treasurer may prescribe requirements for this purpose.

(3) After July 1, 1977, accounts within the rotary fund may be established in the manner provided by sections 67-2019 through 67-2022, Idaho Code, with the numbering and identification sequence to be assigned by the state controller.

History.

I.C., § 57-812, as added by 1976, ch. 51, § 2, p. 152; am. 1994, ch. 180, § 114, p. 420.

STATUTORY NOTES

Cross References.

State controller, § 67-1001 et seq.

State treasurer, § 67-1201 et seq.

Effective Dates.

Section 21 of S. L. 1976, ch. 51 provided that the act should take effect on and after July 1, 1977.

Section 241 of S.L. 1994, ch. 180 provided that such act should become effective on and

after the first Monday in January, 1995 [January 2, 1995] if the amendment to the Constitution of Idaho changing the name of the state auditor to state controller [1994 S.J.R. No. 109, p. 1493] was adopted at the general election held on November 8, 1994. Since such amendment was adopted, the amendment to this section by § 114 of S.L. 1994, ch. 180 became effective January 2, 1995.

57-813. Catastrophic health care cost account. — (1) There is

hereby created in the state treasury an account to be designated the "Catastrophic Health Care Cost Account." The account shall be used solely for payment of insurance premiums, payment of eligible claims beyond the eleven thousand dollar (\$11,000) county deductible or payment of the expenses of administering the catastrophic health care cost account.

(2) The administrator of the catastrophic health care cost program may retain counsel.

(3) All moneys placed in the account are hereby perpetually appropriated to the administrator of the catastrophic health care cost program for purposes of this program. All expenditures from the account shall be paid out in warrants drawn by the state controller upon presentation of proper vouchers from the administrator. Pending use, surplus moneys in the account shall be invested by the state treasurer in the same manner as prescribed in section 67-1210, Idaho Code, with respect to surplus or idle moneys in the state treasury. Interest earned on the investments shall be returned to the account.

History.

I.C., § 57-813, as added by 1982, ch. 190, § 6, p. 511; am. 1991, ch. 233, § 17, p. 553;

am. 1994, ch. 180, § 115, p. 420; am. 1995, ch. 9, § 4, p. 14; am. 2012, ch. 107, § 13, p. 284.

STATUTORY NOTES

Cross References.

Catastrophic health care cost program, §§ 31-3517 to 31-3519.

State controller, § 67-1001 et seq.

State treasurer, § 67-1201 et seq.

Amendments.

The 2012 amendment, by ch. 107, substituted "eleven thousand dollar (\$11,000) county deductible" for "ten thousand dollar (\$10,000) county deductible" in subsection (1).

Compiler's Notes.

This section was repealed by S.L. 1990, ch. 87, § 1, effective October 1, 1991. However, S.L. 1990, ch. 87 was itself repealed by § 1 of S.L. 1991, ch. 233 which became law without the governor's signature. Therefore the repeal of this section by S.L. 1990, ch. 87 never took effect.

Section 7 of S.L. 1982, ch. 190 read: "The provisions of this act are hereby declared to be severable and if any provision of this act or the application of such provision to any person or circumstance is declared invalid for any reason, such declaration shall not affect the validity of remaining portions of this act."

Effective Dates.

Section 19 of S.L. 1991, ch. 233 read: "(1) An emergency existing therefore, which emergency is hereby declared to exist, Section 1 of this act shall be in full force and effect on and after passage and approval.

"(2) Sections 2 through 17 of this act shall be in full force and effect on and after October 1, 1991.

"(3) Section 18 of this act shall be in full force and effect on or after October 1, 1993.

"(4) On October 1, 1991, all moneys contributed by counties to the catastrophic health care cost account as of the close of business on September 30, 1991, shall be separately identified and set aside, and shall be used by the administrator to fund medical costs of participating counties which occurred prior to October 1, 1991, until all claims are paid or until such moneys are exhausted. Any fund balance remaining after the proper payment of claims incurred prior to October 1, 1991, shall be apportioned back to the county of origin. If no fund balance exists, but outstanding claims exist that were incurred prior to October 1, 1991, such claims shall be paid as provided in subsection (5) of this section.

"(5) All claims incurred on or after October 1, 1991, shall be paid from the catastrophic health care cost account funded from state appropriations to the account." Became law without the governor's signature.

Section 241 of S.L. 1994, ch. 180 provided that such act should become effective on and after the first Monday in January, 1995 [January 2, 1995] if the amendment to the Constitution of Idaho changing the name of the state auditor to state controller [1994 S.J.R. No. 109, p. 1493] was adopted at the general election held on November 8, 1994. Since such amendment was adopted, the amendment to this section by § 115 of S.L. 1994, ch. 180 became effective January 2, 1995.

57-814. Budget stabilization fund. — (1) There is hereby created in the state treasury the budget stabilization fund for the purpose of meeting general fund revenue shortfalls and to meet expenses incurred as the result of a major disaster declared by the governor. All moneys in the budget reserve account at the date of approval of this act shall be transferred to the budget stabilization fund. Interest earnings from the investment of moneys in this fund by the state treasurer shall be credited to the permanent building account [fund] subject to the provisions of section 67-1210, Idaho Code.

(2) Subject to the requirements of section 63-3203, Idaho Code, the state controller shall annually transfer moneys from the general fund to the budget stabilization fund subject to the following criteria:

(a) If the state controller certifies that the receipts to the general fund for the fiscal year just ending have exceeded the receipts of the previous fiscal year by more than four percent (4%), then the state controller shall transfer all general fund collections in excess of said four percent (4%) increase to the budget stabilization fund, up to a maximum of one percent (1%) of the actual general fund collections of the fiscal year just ending. The state controller shall make the transfers in four (4) equal amounts during September, December, March and June of the next fiscal year.

(b) The amount of moneys in the budget stabilization fund shall not exceed five percent (5%) of the total general fund receipts for the fiscal year just ending.

(c) The state controller shall transfer moneys in the budget stabilization fund in excess of the limit imposed in subsection (2)(b) of this section to the general fund.

(3) If a majority of the membership of each house of the legislature adopt a concurrent resolution requesting the amount of the transfer specified in subsection (2) of this section be reduced, the state controller shall reduce the amount of the transfer.

(4) Appropriations of moneys from the budget stabilization fund in any year shall be limited to fifty percent (50%) after the fund balance has reached five percent (5%).

History.

I.C., § 57-814, as added by 1984, ch. 249, § 13, p. 596; am. 1990, ch. 206, § 2, p. 463;

am. 1998, ch. 290, § 1, p. 927; am. 2000, ch. 280, § 1, p. 902.

STATUTORY NOTES

Cross References.

State controller, § 67-1001 et seq.
State treasurer, § 67-1201 et seq.

correct the name of the referenced fund. See § 57-1101 et seq.

Compiler's Notes.

The phrase "the date of the approval of this act" in the second sentence in subsection (1) refers to the approval of S.L. 1998, ch. 290, which was approved by the governor on March 24, 1998, and effective July 1, 1999.

The bracketed insertion near the end of subsection (1) was added by the compiler to

Effective Dates.

Section 16 of S.L. 1984, ch. 249 declared an emergency. Approved April 4, 1984.

Section 3 of S.L. 1990, ch. 206 declared an emergency. Approved March 29, 1990.

Section 2 of S.L. 1998, ch. 290 provided this act shall be in full force and effect on and after July 1, 1999.

57-814A. Transfer from budget stabilization fund to general fund. — At the end of the fiscal year, if the state board of examiners determines that insufficient general fund moneys are available to meet the level of general fund appropriations authorized by the legislature for that same fiscal year, the board is hereby authorized to transfer certain unencumbered moneys from the budget stabilization fund to the general fund. Such transfers will be the final accounting adjustment to close the fiscal year and shall be limited to the amount of the insufficiency or one-half of one percent (.5%) of the original general fund appropriations made for the fiscal year just ending, whichever is less. Any transfer made pursuant to this section from the budget stabilization fund to the general fund shall be specifically addressed in the governor’s executive budget recommendation for the following year which is then subject to review or action by the legislature.

History.

I.C., § 57-814A, as added by 1998, ch. 386, § 1, p. 1188; am. 2000, ch. 280, § 2, p. 902.

STATUTORY NOTES

Cross References.

Budget stabilization fund, § 57-814.

General fund, § 67-1205.

State board of examiners, § 67-2001 et seq.

57-815. Idaho ag in the classroom. — (1) There is hereby created an independent body corporate and politic to be known as Idaho ag in the classroom for the purpose of developing and presenting through the joint efforts of the United States department of agriculture, the state department of agriculture, educators at all levels, and representatives of agricultural organizations statewide and nationwide, an educational program that will provide students in kindergarten through grade twelve (12) with a better understanding of the crucial role of agriculture in all aspects of society and of how Idaho agriculture relates to the rest of the world.

(2) Moneys transferred by the Idaho transportation department to Idaho ag in the classroom pursuant to section 49-417B, Idaho Code, shall be used by Idaho ag in the classroom for the purpose of developing and presenting educational programs pursuant to subsection (1) of this section and all moneys so transferred are hereby continuously appropriated for this purpose. The right is reserved to the state of Idaho to audit the funds of Idaho ag in the classroom at any time.

History.

I.C., § 57-815, as added by 1986, ch. 85, § 1, p. 248; am. 1996, ch. 1, § 1, p. 3; am.

2008, ch. 205, § 1, p. 659; am. 2009, ch. 114, § 2, p. 368.

STATUTORY NOTES

Cross References.

Department of agriculture, § 22-101 et seq.

the section to create Idaho ag in the classroom as a separate entity, apart from the general fund monies.

Amendments.

The 2008 amendment, by ch. 205, rewrote

The 2009 amendment, by ch. 114, in the section catchline, deleted “Idaho ag in the

classroom fund" from the end; and rewrote subsection (2), providing for the use of moneys transferred to Idaho ag in the classroom by the Idaho transportation department and deleting reference to the Idaho ag in the classroom fund.

Effective Dates.

Section 3 of S.L. 2009, ch. 114 declared an emergency. Approved April 8, 2009.

57-816. Drug and driving while under the influence enforcement donation fund. — (1) There is hereby created in the state operating fund the drug and driving while under the influence enforcement donation fund. Moneys in the fund may be appropriated only for programs designed to control or eliminate illicit drug traffic or to enforce statutory provisions related to driving while under the influence, and for law enforcement functions associated with such control or enforcement.

(2) Separate and apart from any other moneys in the fund, moneys deposited in the fund pursuant to section 37-2735A, Idaho Code, shall be used exclusively to support a twenty-four (24) hour anonymous hotline and reward system, including any advertising for and about such system, for the reporting of drug violations.

History.

I.C., § 57-816, as added by 1987, ch. 337,

§ 5, p. 709; am. 2006, ch. 113, § 2, p. 308; am. 2009, ch. 108, § 8, p. 344.

STATUTORY NOTES

Amendments.

The 2006 amendment, by ch. 113, substituted "fund" for "account" in the section's heading and in subsection (1); added the subsection (1) designation; and added subsection (2).

The 2009 amendment, by ch. 108, in the

section catchline and in the first sentence in subsection (1), inserted "and driving while under the influence"; and, in the last sentence in subsection (1), inserted "or to enforce statutory provisions related to driving while under the influence" and added "or enforcement."

57-817. United States olympic account. — (1) There is hereby created in the dedicated fund the United States olympic account. Moneys in the account are continuously appropriated to the United States olympic committee, which is a congressionally chartered corporation under public law 95-606—36 USC 371 et seq. Moneys in the account must be paid at least annually to the United States olympic committee.

History.

I.C., § 57-817, as added by 1987, ch. 337, § 6, p. 709.

STATUTORY NOTES

Federal References.

Public Law 95-606 was repealed by Act Aug. 12, 1998, P.L. 105-225, and provisions relating to the United States olympic committee may be found at 36 USCS § 220501 et seq.

Compiler's Notes.

This section was enacted in 1987 with a subsection (1), but no subsection (2).

57-818. Equine education account. — There is hereby created in the state treasury the equine education account. Moneys in the account may be

appropriated only to the university of Idaho for its veterinary science program to be used specifically to enhance and forward the work conducted at the northwest equine reproduction laboratory, and as provided for in this section. In order for appropriated moneys to be expended, such moneys must be matched on a one-to-one match basis by contributions from private sources. Any unencumbered or unexpended balances of appropriations at the end of a fiscal year shall be transferred to the public school income fund by the state controller.

History.

I.C., § 57-818, as added by 1990, ch. 399,
§ 2, p. 1116; am. 1994, ch. 180, § 116, p. 420.

STATUTORY NOTES

Cross References.

Public school income fund, § 33-903.
State controller, § 67-1001 et seq.

Effective Dates.

Section 3 of S.L. 1990, ch. 399 provided that the act would become effective July 1, 1991.
Section 241 of S.L. 1994, ch. 180 provided that such act should become effective on and

after the first Monday in January, 1995 [January 2, 1995] if the amendment to the Constitution of Idaho changing the name of the state auditor to state controller [1994 S.J.R. No. 109, p. 1493] was adopted at the general election held on November 8, 1994. Since such amendment was adopted, the amendment to this section by § 116 of S.L. 1994, ch. 180 became effective January 2, 1995.

57-819. Alzheimer’s disease services account. — There is hereby created in the dedicated fund of the state treasury, the Alzheimer’s disease services account. Moneys in the account shall be appropriated to the Idaho chapter of the Alzheimer’s disease and related disorders association for use in services for and support of families and victims of Alzheimer’s disease who are residents of the state of Idaho.

History.

I.C., § 57-819, as added by 1991, ch. 183,
§ 2, p. 447.

STATUTORY NOTES

Compiler’s Notes.

For more on the Idaho chapter of the Al-

zheimer’s association, see <http://www.alz.org/idaho>.

57-820. The Idaho guard and reserve family support fund. — There is hereby created in the state treasury, the Idaho guard and reserve family support fund. Moneys in the fund shall be continuously appropriated to the “Idaho Guard and Reserve Family Support Fund, Inc.” for support of members and families of members of the national guard and reserve who are residents of the state of Idaho or members of national guard or reserve units located in Idaho. The state treasurer shall invest idle moneys in the fund and interest earned from such investments shall be returned to the fund.

History.

I.C., § 57-820, as added by 2005, ch. 104,
§ 2, p. 328; am. 2006, ch. 370, § 1, p. 1108.

STATUTORY NOTES

Cross References.

State treasurer, § 67-1201 et seq.

Amendments.

The 2006 amendment, by ch. 370, added the last sentence.

57-821. American red cross of greater Idaho fund. — There is hereby created in the state treasury, the American red cross of greater Idaho fund. Moneys in the fund shall be appropriated to the Idaho chapter of the American red cross to provide disaster relief services, emergency preparation and prevention services and communication services between the armed forces and families. Moneys in the fund shall be appropriated for use in Idaho only.

History.

I.C., § 57-821, as added by 2006, ch. 88, § 3, p. 258.

57-822. INL settlement fund. — (1) There is hereby established in the state treasury a fund, separate and apart from all other public moneys or funds of this state, to be known as the INL settlement fund.

(2) The fund shall consist of all payments received from the U.S. department of energy, or a successor agency, pursuant to the 1995 court approved settlement between the state of Idaho, the U.S. department of energy and the U.S. navy.

(3) Moneys in the fund may be expended by the office of the governor, consistent with the terms of the court approved settlement, to mitigate the impacts of the Idaho national laboratory workforce restructuring on the Idaho economy by furthering the creation of sustainable jobs and diversification of the southeastern Idaho economy, and for other purposes mutually acceptable to the governor of the state of Idaho and the U.S. department of energy.

(4) All moneys placed in the fund are hereby continuously appropriated to the office of the governor for the purposes described in this section.

(5) Pending use, surplus moneys in the fund shall be invested by the state treasurer in the same manner as provided under section 67-1210, Idaho Code. Interest earned on the investments shall be returned to the fund.

History.

I.C., § 67-806A, as added by 1997, ch. 244, § 1, p. 708; am. and redesign. 2007, ch. 83, § 12, p. 221.

STATUTORY NOTES

Amendments.

The 2007 amendment, by ch. 83, redesignated the section from § 67-806A and in the section catchline and subsection (1), substi-

tuted "INL" for "INEEL"; and deleted "engineering and environmental" preceding "laboratory workforce" in subsection (3).

57-823. Special olympics Idaho fund. — There is hereby created in the state treasury the "Special Olympics Idaho Fund." Moneys in the fund

shall be appropriated to the Idaho chapter of special olympics for athletic programs and health screenings for Idaho children and adults with developmental disabilities. Fund moneys will be used to buy sports equipment, uniforms and transportation services. Donations to the fund will also be used to provide school enrichment programs to children with or without disabilities and health screenings for athletes with developmental disabilities. Funds will also be used for training expenses and year-round event competition. Moneys in the fund shall be appropriated for use in Idaho only.

History.

I.C., § 57-823, as added by 2008, ch. 218,
§ 2, p. 676.

STATUTORY NOTES

Compiler's Notes.

For more on the Idaho chapter of special olympics, see <http://www.idso.org/public/index.cfm>.

57-824. Idaho food bank fund. — There is hereby created in the state treasury, the Idaho food bank fund. Moneys in the fund shall be appropriated to the Idaho food bank to provide food, information and support services to hungry people throughout this state through partnerships with nonprofit agencies, the food industry, government, volunteers, corporations and individuals by serving as a central clearinghouse for donated and purchased food.

History.

I.C., § 57-824, as added by 2009, ch. 63,
§ 3, p. 173.

STATUTORY NOTES

Compiler's Notes.

For more on the Idaho food bank, see <http://www.idahofoodbank.org>.

CHAPTER 9

PUBLIC OBLIGATIONS REGISTRATION ACT

SECTION.

- 57-901. Short title.
- 57-902. Definitions.
- 57-903. Findings of state interests — Purposes.
- 57-904. Systems of registration.
- 57-905. Certificated registered public obligation — Execution — Authentication.
- 57-906. Certificated registered public obligation — Signatures.

SECTION.

- 57-907. Certificated registered public obligation — Seal.
- 57-908. Agents — Depositories.
- 57-909. Costs — Collection.
- 57-910. Deposits for security.
- 57-911. Public records — Locations.
- 57-912. Applicability — Election — Recession.
- 57-913. Construction.
- 57-914. Amendment or repeal — Effect.

57-901. Short title. — This act may be cited as the “Registered Public Obligations Act of Idaho.”

History.

I.C., § 57-901, as added by 1983, ch. 98, § 1, p. 210.

STATUTORY NOTES**Prior Laws.**

Former §§ 57-901 to 57-905, which comprised 1923, ch. 107, §§ 1 to 4, p. 134; I.C.A., §§ 55-901 to 55-903, 55-903A, 55-904; 1941, ch. 91, §§ 1 to 3, p. 164, was repealed by S.L. 1970, ch. 32, § 1, p. 70.

Compiler's Notes.

The term "this act" refers to S.L. 1983, ch. 98, which is compiled as §§ 57-901 to 57-914.

57-902. Definitions. — As used in this chapter:

(1) "Authorized officer" means any individual required or permitted, alone or with others by any provision of law or by an issuing public entity to execute a certificated registered public obligation or any writing relating to an uncertificated registered public obligation.

(2) "Certificated registered public obligation" means a registered public obligation which is represented by an instrument.

(3) "Code" means the Internal Revenue Code of 1954, as amended.

(4) "Facsimile seal" means the reproduction by engraving, imprinting, stamping, or other means of the seal of the issuer, official or official body.

(5) "Facsimile signature" means the reproduction by engraving, imprinting, stamping, or other means of a manual signature.

(6) "Financial intermediary" means a bank, broker, clearing corporation or other person, or the nominee of any of them, which in the ordinary course of its business maintains registered public obligation accounts for its customers, when so acting.

(7) "Issuer" means a public entity which issues an obligation.

(8) "Obligation" means an agreement of a public entity to pay principal and any interest thereon, whether in the form of a contract to repay borrowed money, a lease, an installment purchase agreement, or otherwise, and includes a share, participation, or other interest in any such agreement.

(9) "Official actions" mean the actions by statute, order, ordinance, resolution, contract, or other authorized means by which an issuer provides for issuance of a registered public obligation.

(10) "Official or official body" means an officer or board that is empowered under the laws of one or more states including this state to provide for original issuance of an obligation of the issuer, by defining the obligation and its terms, conditions and other incidents, the successor or successors of any such official or official body, and such other person or group of persons as shall be assigned duties of such official or official body with respect to a registered public obligation under applicable law from time to time.

(11) "Public entity" means any entity, department, or agency which is empowered under the laws of one or more states, territories, possessions of the United States or the District of Columbia, including this state, to issue obligations any interest with respect to which may, under any provision of law, be provided an exemption from the income tax referred to in the code. The term "public entity" may thus include this state, a political subdivision, a municipal corporation, a state university or college, a school or other

special district, a joint agreement entity, a public authority, a public trust, a nonprofit corporation, and other organizations.

(12) "Registered public obligation" means an obligation issued by a public entity which is issued pursuant to a system of registration.

(13) "System of registration" and its variants means a plan that provides:

(a) With respect to a certificated registered public obligation, that (i) the certificated registered public obligation specify a person entitled to the registered public obligation and the rights it represents, and (ii) transfer of the certificated registered public obligation and the rights it represents may be registered upon books maintained for that purpose by or on behalf of the issuer; and

(b) With respect to an uncertificated registered public obligation, that (i) books be maintained by or on behalf of the issuer for the purpose of registration of the transfer of a registered public obligation that specify the person entitled to the public obligation and the rights evidenced thereby, and (ii) the transfer of the uncertificated registered public obligation and the rights evidenced thereby be registered upon such books.

(14) "Uncertificated registered public obligation" means a registered public obligation which is not represented by an instrument.

History.

I.C., § 57-902, as added by 1983, ch. 98,
§ 1, p. 210.

STATUTORY NOTES

Prior Laws.

Former § 57-902 was repealed. See Prior Laws, § 57-901.

ferred to in subsection (3), was amended in 1986 by P.L. 99-514 and renamed as the Internal Revenue Code of 1986. See 26 USCS § 1 et seq.

Federal References.

The Internal Revenue Code of 1954, re-

57-903. Findings of state interests — Purposes. — (1) The code provides that interest with respect to certain obligations may not be exempt from federal income taxation unless they are in registered form. It is therefore a matter of state concern that public entities be authorized to provide for the issuance of obligations in such form. It is a purpose of this act to empower all public entities to establish and maintain a system pursuant to which obligations may be issued in registered form within the meaning of the applicable provisions of the code.

(2) Obligations have traditionally been issued in bearer rather than in registered form, and a change from bearer to registered form may affect the relationships, rights and duties of issuers of and the persons that deal with obligations, and by such effect, the costs. Such effects will impact the various issuers and varieties of obligations differently depending on their legal and financial characteristics, their markets and their adaptability to recent and prospective technological and organizational developments. It is, therefore, a matter of state concern that public entities be provided flexibility in the development of such systems and control over system incidents, so as to

accommodate such differing impacts. It is a purpose of this act to empower the establishment and maintenance, and amendment from time to time, of differing systems of registration of obligations, including system incidents, so as to accommodate the differing impacts upon issuers and varieties of obligations. It is further a purpose of this act to authorize systems that will facilitate the prompt and accurate transfer of registered public obligations and develop practices with regard to the registration and transfer of registered public obligations.

History.

I.C., § 57-903, as added by 1983, ch. 98,
§ 1, p. 210.

STATUTORY NOTES**Prior Laws.**

Former § 57-903 was repealed. See Prior
Laws, § 57-901.

Compiler's Notes.

The term "this act" refers to S.L. 1983, ch.
98, which is compiled as §§ 57-901 to 57-914.

57-904. Systems of registration. — (1) Each issuer is authorized to establish and maintain a system of registration with respect to each obligation which it issues. The system may either be (a) a system pursuant to which only certificated registered public obligations are issued, or (b) a system pursuant to which only uncertificated registered public obligations are issued, or (c) a system pursuant to which both certificated and uncertificated registered public obligations are issued. The issuer may amend, discontinue and reinstitute any system, from time to time, subject to covenants.

(2) The system shall be established, amended, discontinued, or reinstituted for the issuer by, and shall be maintained for the issuer as provided by, the official or official body.

(3) The system shall be described in the registered public obligation or in the official actions which provide for original issuance of the registered public obligation, and in subsequent official actions providing for amendments and other matters from time to time. Such description may be by reference to a program of the issuer which is established by the official or official body.

(4) The system shall define the method or methods by which transfer of the registered public obligation shall be effective with respect to the issuer, and by which payment of principal and any interest shall be made. The system may permit the issuance of registered public obligations in any denomination to represent several registered public obligations of smaller denominations. The system may also provide for the form of any certificated registered public obligation or of any writing relating to an uncertificated registered public obligation, for identifying numbers or other designations, for a sufficient supply of certificates for subsequent transfers, for record and payment dates, for varying denominations, for communications to holders or owners of obligations, and for accounting, cancelled certificate destruction, registration and release of security interests and other incidental matters. Unless the issuer otherwise provides, the record date for interest payable on

the first or fifteenth days of a month shall be the fifteenth day or the last business day of the preceding month, respectively, and for interest payable on other than the first or fifteenth days of a month, shall be the fifteenth calendar day before the interest payment date.

(5) Under a system pursuant to which both certificated and uncertificated registered public obligations are issued, both types of registered public obligations may be regularly issued, or one type may be regularly issued and the other type issued only under described circumstances or to particular described categories of owners and provision may be made for registration and release of security interests in registered public obligations.

(6) The system may include covenants of the issuer as to amendments, discontinuances, and reinstitutions of the system and the effect of such on the exemption of interest from the income tax provided for by the code.

(7) Whenever an issuer shall issue an uncertificated registered public obligation, the system of registration may provide that a true copy of the official actions of the issuer relating to the uncertificated registered public obligation be maintained by the issuer and by the person, if any, maintaining the system on behalf of the issuer, so long as the uncertificated registered public obligation remains outstanding and unpaid. A copy of the official actions, verified by an authorized officer, shall be admissible before any court of record, administrative body or arbitration panel without further authentication.

(8) Nothing in this chapter shall preclude a conversion from one of the forms of registered public obligations provided for by this chapter to a form of obligation not provided for by this chapter if interest on the obligation so converted will continue to be exempt from the income tax provided for by the code.

(9) The rights provided by other laws with respect to obligations in forms not provided for by this chapter shall, to the extent not inconsistent with this chapter, apply with respect to registered public obligations issued in forms authorized in this chapter.

History.

I.C., § 57-904, as added by 1983, ch. 98,
§ 1, p. 210.

STATUTORY NOTES

Prior Laws.

Former § 57-904 was repealed. See Prior
Laws, § 57-901.

57-905. Certificated registered public obligation — Execution — Authentication. — (1) A certificated registered public obligation shall be executed by the issuer by the manual or facsimile signature or signatures of authorized officers. Any signature of an authorized officer may be attested by the manual or facsimile signature of another authorized officer.

(2) In addition to the signature referred to in subsection (1) of this section any certificated registered public obligation or any writing relating to an uncertificated registered public obligation may include a certificate or

certificates signed by the manual or facsimile signature of an authenticating agent, registrar, transfer agent or the like.

(3) At least one (1) signature of an authorized officer or other person required or permitted to be placed on a certificated registered public obligation shall be a manual signature.

History.

I.C., § 57-905, as added by 1983, ch. 98,
§ 1, p. 210.

STATUTORY NOTES

Prior Laws.

Former § 57-905 was repealed. See Prior
Laws, § 57-901.

57-906. Certificated registered public obligation — Signatures.

— (1) Any certificated registered public obligation signed by the authorized officers at the time of the signing thereof shall remain valid and binding, notwithstanding that before the issuance thereof any or all of such officers shall have ceased to fill their respective offices.

(2) Any authorized officer empowered to sign any certificated registered public obligation may adopt as and for the signature of such officer the signature of a predecessor in office in the event that such predecessor's signature appears on such certificated registered public obligation. An authorized officer incurs no liability by adoption of a predecessor's signature that would not be incurred by the authorized officer if the signature were that of the authorized officer.

History.

I.C., § 57-906, as added by 1983, ch. 98,
§ 1, p. 210.

57-907. Certificated registered public obligation — Seal. — When a seal is required or permitted in the execution of any certificated registered public obligation, an authorized officer may cause the seal to be printed, engraved, stamped, or otherwise placed in facsimile thereon. The facsimile seal has the same legal effect as the impression of the seal.

History.

I.C., § 57-907, as added by 1983, ch. 98,
§ 1, p. 210.

57-908. Agents — Depositories. — (1) An issuer may appoint for such term as may be agreed, including for so long as a registered public obligation may be outstanding, corporate or other authenticating agents, transfer agents, registrars, paying or other agents and specify the terms of their appointment, including their rights, their compensation and duties, limits upon their liabilities and provisions for their payment of liquidated damages in the event of breach of certain of the duties imposed, which liquidated damages may be made payable to the issuer, the owner or a financial

intermediary. None of such agents need have an office or do business within this state.

(2) An issuer may agree with custodian banks and financial intermediaries, and nominees of any of them, in connection with the establishment and maintenance by others of a central depository system for the transfer or pledge of registered public obligations. Any such custodian banks and financial intermediaries, and nominees, may, if qualified and acting as fiduciaries, also serve as authenticating agents, transfer agents, registrars, paying or other agents of the issuer with respect to the same issue of registered public obligations.

(3) Nothing shall preclude the issuer from itself performing, either alone or jointly with other issuers, any transfer, registration, authentication, payment or other function described in this section.

History.

I.C., § 57-908, as added by 1983, ch. 98,
§ 1, p. 210.

57-909. Costs — Collection. — (1) An issuer, prior to or at original issuance of registered public obligations, may provide as part of a system of registration that the transferor or transferee of the registered public obligations pay all or a designated part of the costs of the system as a condition precedent to transfer, that costs be paid out of proceeds of the registered public obligations, or that both methods be used. The portion of the costs of the system not provided to be paid for by the transferor or transferee or out of proceeds shall be the liability of the issuer.

(2) The issuer may as a part of a system of registration provide for reimbursement or for satisfaction of its liability by payment by others. The issuer may enter into agreements with others respecting such reimbursement or payment, may establish fees and charges pursuant to such agreements or otherwise, and may provide that the amount or estimated amount of such fees and charges shall be reimbursed or paid from the same sources and by means of the same collection and enforcement procedures and with the same priority and effect as with respect to the obligation.

History.

I.C., § 57-909, as added by 1983, ch. 98,
§ 1, p. 210.

57-910. Deposits for security. — Obligations issued by public entities under the laws of one or more states, territories, possessions, or the District of Columbia, which are in registered form, whether or not represented by an instrument, and which, except for their form, satisfy the requirements with regard to security for deposits of moneys of public agencies prescribed pursuant to any law of this state, shall be deemed to satisfy all such requirements even though they are in registered form if a security interest in such obligations is perfected on behalf of the public agency whose moneys are so deposited.

History.

I.C., § 57-910, as added by 1983, ch. 98,
§ 1, p. 210.

57-911. Public records — Locations. — (1) Records, with regard to the ownership of or security interests in registered public obligations shall be subject to disclosure according to chapter 3, title 9, Idaho Code.

(2) Registration records of the issuer may be maintained at such locations within or without this state as the issuer shall determine.

History.

I.C., § 57-911, as added by 1983, ch. 98,
§ 1, p. 210; am. 1990, ch. 213, § 87, p. 480.

STATUTORY NOTES**Effective Dates.**

Section 111 of S.L. 1990, ch. 213 as amended by § 16 of S.L. 1991, ch. 213 provided that §§ 3 through 45 and 48 through

110 of the act should take effect July 1, 1993 and that §§ 1, 2, 46 and 47 should take effect July 1, 1990.

57-912. Applicability — Election — Recession. — (1) Unless at any time prior to or at original issuance of a registered public obligation the official or official body of the issuer determines otherwise, this chapter shall be applicable to such registered public obligation, notwithstanding any provision of law to the contrary. When this chapter is applicable, the provisions of this chapter shall prevail over any inconsistent provision of any other law.

(2) Nothing in this chapter limits or prevents the issuance of obligations in any other form or manner authorized by law.

(3) Unless determined otherwise pursuant to subsection (1) of this section, the provisions of this chapter shall be applicable with respect to obligations which have heretofore been approved by vote, referendum or hearing, authorizing or permitting the authorization of obligations in bearer and registered form, or in bearer form only, and such obligations need not be resubmitted for a further vote, referendum or hearing, for the purpose of authorizing or permitting the authorization of registered public obligations pursuant to this chapter.

History.

I.C., § 57-912, as added by 1983, ch. 98,
§ 1, p. 210.

57-913. Construction. — This chapter shall be construed in conjunction with the uniform commercial code and the principles of contract law relative to the registration and transfer of obligations.

History.

I.C., § 57-913, as added by 1983, ch. 98,
§ 1, p. 210.

STATUTORY NOTES

Cross References.

Uniform commercial code — investment security, § 28-8-101 et seq.

57-914. Amendment or repeal — Effect. — The state hereby covenants with the owners of any registered public obligations that it will not amend or repeal this chapter if the effect may be to impair the exemption from income taxation of interest on registered public obligations.

History.

I.C., § 57-914, as added by 1983, ch. 98, § 1, p. 210.

STATUTORY NOTES

Compiler's Notes.

Section 2 of S.L. 1983, ch. 98 read: "The provisions of this act are hereby declared to be severable and if any provision of this act or the application of such provision to any person or circumstance is declared invalid for

any reason, such declaration shall not affect the validity of remaining portions of this act."

Effective Dates.

Section 3 of S.L. 1983, ch. 98 declared an emergency. Approved March 29, 1983.

CHAPTER 10
STATE LAND WATER MAINTENANCE AND
ASSESSMENT FUND

SECTION.

57-1001 — 57-1005. [Repealed.]

57-1001 — 57-1005. State land and water maintenance and assessment fund — Procedures. [Repealed.]

STATUTORY NOTES

Compiler's Notes.

These sections, which comprised S. L. 1939, ch. 189, §§ 1 to 5, p. 354, were repealed by S. L. 1976, ch. 51, § 1, effective July 1, 1977.

CHAPTER 11
PERMANENT BUILDING FUND

SECTION.

- 57-1101. Creation of permanent building fund.
- 57-1102. Transfer of unexpended appropriation for remodeling school buildings.
- 57-1103. Transfer of unexpended appropriation for remodeling hospital buildings.
- 57-1104. Transfer of unexpended balances in certain bond accounts.
- 57-1105. Appropriation — Purpose — Limitations and conditions.

SECTION.

- 57-1105A. Authority of legislature to make grants from permanent building fund to junior college districts.
- 57-1106. Limiting availability and use of funds — Duties of state board of examiners and state planning board [division of tourism and industrial development] — Application limited. [Repealed.]
- 57-1107. Construction of improvement upon

SECTION.

- approval — Payment.
 57-1108. Permanent building fund created —
 Use of fund.
 57-1109. Net revenues received from abandoned property deposited to credit of general account.
 57-1110. Additional tax on filing income tax credited to permanent building fund.

SECTION.

- 57-1111. Permanent building fund advisory council — Commissioner of public works, duties. [Repealed.]
 57-1112. Anticipation of revenues in permanent building fund.
 57-1113. Refund of tax.

57-1101. Creation of permanent building fund. — There is hereby created in the state treasury, a permanent building fund.

History.

1947, ch. 116, § 1, p. 274.

RESEARCH REFERENCES

C.J.S. — 64A C.J.S., Municipal Corporations, § 2095.

57-1102. Transfer of unexpended appropriation for remodeling school buildings. — All encumbered but unexpended, and unencumbered balances in the appropriations made by Chapter 17, First Extraordinary Session Laws, Twenty-eighth Legislature, are hereby transferred into and made part of the permanent building fund, and the same are hereby re-appropriated and set aside in the permanent building fund to be used exclusively for the purposes set forth in said act, without impairment of existing encumbrances.

History.

1947, ch. 116, § 2, p. 274.

STATUTORY NOTES**Compiler's Notes.**

Chapter 17, First Extraordinary Session Laws, Twenty-eighth Legislature (1946) provided for an appropriation of moneys from the general fund of the state of Idaho to the Board of Regents, University of Idaho, and State

Board of Education for the planning, remodeling and construction of necessary buildings at the U. of I. Southern Branch, the State School for the Deaf and Blind, and Idaho Industrial Training School.

57-1103. Transfer of unexpended appropriation for remodeling hospital buildings. — All encumbered but unexpended, and unencumbered balances in the appropriations made by Chapter 39, First Extraordinary Session Laws, Twenty-eighth Legislature, are hereby transferred into and shall constitute a part of the permanent building fund, and the same are hereby reappropriated and set aside in the permanent building fund to be used exclusively for the purposes set forth in said act, without impairment of existing encumbrances.

History.

1947, ch. 116, § 3, p. 274.

STATUTORY NOTES

Compiler's Notes.

Chapter 39, First Extraordinary Session Laws, Twenty-eighth Legislature (1946) provided for an appropriation of moneys from the general fund of the state of Idaho to the

Department of Charitable Institutions for the State Hospital North, the State Hospital South, and the State School and Colony, for the planning and construction of buildings.

57-1104. Transfer of unexpended balances in certain bond accounts. — It is declared hereby that the bond issues heretofore authorized by Chapter 206, 1939 Session Laws, and Chapter 186, 1941 Session Laws have been retired in full by payment; and the balances remaining unexpended in the bond accounts created by reason of such bond issues are hereby transferred into and made part of the permanent building fund and disposed of as follows: The residue in the bond account for State Hospital North, Orofino, \$664.10 more or less, is transferred into the permanent building fund and the bond account is closed, the project having been completed; the residue in the bond account for equipping and furnishing the new Boy's Dormitory, Industrial School, St. Anthony, \$621.24 more or less, is transferred into the permanent building fund and the bond account is closed, the project having been completed; the residue in the bond account for fire escapes, Idaho State School for the Deaf and the Blind, Gooding, \$1,058.20 more or less, is transferred into the permanent building fund and the bond account is closed, the project having been completed; the residue in the bond account for remodeling the Boys' dormitory at the State School for the Deaf and the Blind, Gooding, \$13.85 more or less, is transferred into the permanent building fund, and the bond account is closed, the project having been completed; the residue in the bond account for heating plant and laundry room at the Idaho State School for the Deaf and the Blind, Gooding, \$45.36 more or less, is transferred into the permanent building fund and the bond account is closed, the project having been completed. The residue in the bond account, State Hospital South, Blackfoot, \$26,537.66 more or less, is hereby transferred into the permanent building fund and appropriated and set aside in the permanent building fund without impairment of existing encumbrances, for completion of the unfinished project for which the said bonds were issued; the residue in the bond account, State Historical Society, Boise, \$14,431.31 more or less, is hereby transferred into the permanent building fund and appropriated and set aside in the permanent building fund without impairment of existing encumbrances, for completion of the unfinished project for which the said bonds were issued; and the residue in the bond account for Eagle Island Dormitory, Boise, \$14,341.31 more or less, is hereby transferred into the permanent building fund, and appropriated and set aside in the permanent building fund without impairment of existing encumbrances, for completion of the unfinished project for which the said bonds were issued.

History.

1947, ch. 116, § 4, p. 274.

STATUTORY NOTES

Compiler's Notes.

Chapter 206, S.L. 1939 provided for the construction and remodeling of buildings at the State Hospital North, the State Hospital South, the Deaf and Blind School and for the State Historical Society at Boise, making provisions for such construction by a loan and providing for the payment of the bonds.

Chapter 186, S.L. 1941 provided for raising funds to be used for specified purposes at certain public educational institutions, the penitentiary and Eagle Island Prison Farm and the payment of such bond issued at maturity.

57-1105. Appropriation — Purpose — Limitations and conditions. — All unencumbered and otherwise unappropriated funds now or hereafter placed in the permanent building account are hereby perpetually appropriated to the permanent building fund advisory council and the division of public works, subject to the provisions of chapter 57, title 67, Idaho Code.

History.

1947, ch. 116, § 5, p. 274; am. 1989, ch. 39, § 1, p. 52.

STATUTORY NOTES

Cross References.

Division of public works, § 67-5705.
Permanent building fund advisory council, § 67-5710.

Compiler's Notes.

Section 1 of S.L. 1950 (E.S.), ch. 55, appropriated \$2,000,000 from the general fund into the permanent building fund. Section 2 of said act exempted the appropriation from

§§ 67-3601 — 67-3614. Section 3 of said act prohibited the making of contracts under the permanent building fund until approved by the board of examiners and, in cases where they are concerned, the board of regents or the board of education. Section 4 of said act provided that the act should be in full force and effect 60 days after its passage and approval. Approved March 7, 1950.

57-1105A. Authority of legislature to make grants from permanent building fund to junior college districts. — It is hereby declared that upon the recommendation of the permanent building fund advisory council or upon its own motion the legislature is empowered to make grants from the permanent building fund to the junior college districts of the state of Idaho. Said grants may be used by said junior college districts for the construction of physical plant facilities.

History.

I.C., § 57-1105A, as added by 1969, ch. 249, § 1, p. 774.

STATUTORY NOTES

Cross References.

Junior colleges, § 33-2101 et seq.
Permanent building fund advisory council, § 67-5710.

Effective Dates.

Section 2 of S.L. 1969, ch. 249 declared an emergency. Approved March 25, 1969.

57-1106. Limiting availability and use of funds — Duties of state board of examiners and state planning board [division of tourism and industrial development] — Application limited. [Repealed.]

STATUTORY NOTES

Compiler's Notes.

This section, which comprised 1947, ch. 116, § 6, p. 274; am. 1947, ch. 196, § 1, p. 472;

am. 1949, ch. 66, § 1, p. 112, was repealed by S.L. 1989, ch. 39, § 2.

57-1107. Construction of improvement upon approval — Payment. — Upon legislative appropriation from the permanent building account, it shall be the duty of the permanent building fund advisory council to cause the approved construction, acquisition or improvement to be promptly completed in accordance with the terms of the approving legislation, and to be paid for on claims presented against the state out of the permanent building fund herein created and appropriated for that purpose.

History.

1947, ch. 116, § 7, p. 274; am. 1947, ch. 196, § 2, p. 472; am. 1989, ch. 39, § 3, p. 52.

STATUTORY NOTES

Cross References.

Permanent building fund advisory council, § 67-5710.

57-1108. Permanent building fund created — Use of fund. — The permanent building fund is hereby created and established in the state treasury to which shall be deposited all revenues derived from taxes imposed and transfers authorized pursuant to the provisions of this act. All moneys now or hereafter in the permanent building fund are hereby dedicated for the purpose of building needed structures, renovations, repairs to and remodeling of existing structures at the several state institutions and for the several agencies of state government. The state treasurer shall invest the idle moneys in the fund, and the interest earned on such investments shall be retained by the fund.

History.

1961, ch. 43, § 1, p. 66; am. 1998, ch. 26, § 1, p. 143.

STATUTORY NOTES

Cross References.

Beer tax, additional tax credited to permanent building fund, § 23-1008.

Cigarette tax, portion credited to permanent building fund, § 63-2520.

Sales tax fund, payments from, § 63-3638.

State treasurer, § 67-1201 et seq.

Compiler's Notes.

The term "this act" refers to S.L. 1961, ch. 43, which is compiled as §§ 23-1008, 57-1108 to 57-1110, and 57-1112.

Effective Dates.

Section 2 of S.L. 1998, ch. 26 provided that

this act shall be in full force and effect on and after July 1, 1999.

57-1109. Net revenues received from abandoned property deposited to credit of general account. — Any net revenues derived under and pursuant to the provisions of sections 14-501 — 14-543, Idaho Code, shall be deposited by the authority collecting the same directly to the credit of the general account.

History.

1961, ch. 43, § 4, p. 66; am. 1982, ch. 136, § 1, p. 387.

STATUTORY NOTES

Compiler's Notes.

As enacted, this section contained a statutory reference to provisions that were enacted in 1961 and codified as former §§ 14-501 to 14-531. Although those sections were re-

pealed in 1980 and the chapter was repealed and reenacted again in 1983, the subject matter of chapter 5, title 14, Idaho Code, has remained essentially the same.

57-1110. Additional tax on filing income tax credited to permanent building fund. — The state tax commission of the state of Idaho is hereby directed to deposit ten dollars (\$10.00) for each tax return it processes in regard to which the taxpayer is required to pay the tax imposed by sections 63-3082 through 63-3087, Idaho Code, directly to the credit of the permanent building fund.

History.

1961, ch. 43, § 6, p. 66; am. 1997, ch. 23, § 1, p. 32.

STATUTORY NOTES

Cross References.

State tax commission, § 63-101.

and refer to the state tax commission. See S.L. 1967, ch. 125, § 7.

Compiler's Notes.

The office of the state tax collector has been abolished and all the powers and duties conferred upon the state tax commission. All references in the laws of the state of Idaho to the state tax collector shall be taken to mean

Effective Dates.

Section 2 of S.L. 1997, ch. 23 declared an emergency and provided that the act should be in full force and effect on and after its approval retroactive to January 1, 1997. Approved March 3, 1997.

57-1111. Permanent building fund advisory council — Commissioner of public works, duties. [Repealed.]

STATUTORY NOTES

Compiler's Notes.

This section, which comprised S.L. 1961,

ch. 43, § 8, p. 66, was repealed by S.L. 1974, ch. 34, § 1, p. 988.

57-1112. Anticipation of revenues in permanent building fund. — The state treasurer is hereby authorized and directed to anticipate the revenues in the permanent building fund by the issuance of tax anticipation

notes in accordance with authority conferred by sections 63-3201, 63-3202, 63-3203, 63-3204, and 63-3205, Idaho Code, as amended by chapter 172, Idaho Session Laws of 1957, and in accordance with the procedures and subject to the limitations provided in those sections, as amended, in the same manner as though the revenues in the general fund were being anticipated.

History.

1961, ch. 43, § 10, p. 66.

STATUTORY NOTES

Cross References.

State treasurer, § 67-1201 et seq.

Section 2 of S.L. 1983, ch. 102 enacted new 63-3201 to 63-3204, Idaho Code. Section 63-3205, Idaho Code, remains repealed.

Compiler's Notes.

Sections 63-3201, 63-3202, 63-3203, 63-3204, and 63-3205, Idaho Code, as amended by chapter 172, Idaho Session Laws of 1957, were repealed by S.L. 1983, ch. 102, § 1.

Effective Dates.

Section 11 of S.L. 1961, ch. 43 provided that the act should become effective on and after July 1, 1961.

57-1113. Refund of tax. — When it is determined that a taxpayer is entitled to a refund of beer tax, cigarette tax or the income tax filing fee, after such or any portion thereof has been credited to the permanent building fund, the state tax commission hereby is empowered to authorize and direct refund of said tax, or portion thereof so credited, from said permanent building fund.

When it is determined that a taxpayer is entitled to a refund of liquor funds after the same has been credited to the permanent building fund, the director of the state liquor division hereby is empowered to authorize and direct refund of said tax, or portion thereof so credited, from said permanent building fund.

History.

I.C., § 57-1113, as added by 1963, ch. 97, § 1, p. 315; am. 2009, ch. 23, § 58, p. 53.

STATUTORY NOTES

Cross References.

Beer tax, additional tax credited to permanent building fund, § 23-1008.

Cigarette tax, portion credited to permanent building fund, § 63-2520.

Amendments.

The 2009 amendment, by ch. 23, substituted "director of the state liquor division" for "superintendent of the Idaho state dispensary" in the second paragraph.

Compiler's Notes.

The office of the state tax collector has been abolished and all the powers and duties conferred upon the state tax commission. All reference in the laws of the state of Idaho to the state tax collector shall be taken to mean and refer to the state tax commission. See S.L. 1967, ch. 125, § 7.

CHAPTER 12

TAYLOR GRAZING ACT FUNDS

SECTION.

57-1201. Distribution of funds to counties by state treasurer.

57-1202. Deposit of funds with county treasurer — Grazing district treasurer — Warrants against fund.

SECTION.

57-1203. Expenditure of funds — Purposes.

57-1204. State grazing districts and boards authorized and created.

57-1205. Grazing board central committee — Powers and duties.

57-1201. Distribution of funds to counties by state treasurer. —

All funds received by the state of Idaho, as its distributive share of the amounts collected by the United States Government under the provisions of the Congress of June 28, 1934 (48 Stat. 1269) known as the Taylor Grazing Act, and any act amendatory thereof, shall be deposited with the state treasurer. Upon receipt of said money, the state treasurer shall distribute the same to the several counties of the state in which grazing districts, or lands producing such moneys are located, by warrant drawn on the state treasurer. The state treasurer, shall, upon the date this act becomes effective, and annually thereafter, ascertain from the proper United States officers having the records of receipt from grazing permits, the amount of receipts from such sources in the state of Idaho for each year for which money is received by the state of Idaho, keep a separate account of the sums received from lands producing such moneys, and apportion the distributive shares of the same among the several counties in which said grazing district is located; and if any such grazing district lies in more than one county of the state, each such county shall receive such proportionate amount of said sum as the area of such grazing district included within the boundary of such county shall bear to the total area of such grazing district.

History.

1937, ch. 28, § 1, p. 39; am. 1939, ch. 57, § 1, p. 102; am. 1980, ch. 137, § 1, p. 301.

STATUTORY NOTES

Cross References.

State treasurer, § 67-1201 et seq.

Federal References.

The Taylor Grazing Act, referred to in this section, is compiled as 43 U.S.C.S. § 315 et seq.

Compiler's Notes.

The phrase "the date this act becomes effective"

in the third sentence refers to the effective date of the enactment of this section by S.L. 1937, ch. 28, which was effective May 5, 1937.

The reference enclosed in parentheses so appeared in the law as enacted.

RESEARCH REFERENCES

C.J.S. — 64A C.J.S., Municipal Corporations, §§ 2091 to 2095.

57-1202. Deposit of funds with county treasurer — Grazing district treasurer — Warrants against fund. — All money paid to the county or counties in which such grazing district lies, shall be deposited with the county treasurer. The grazing district board of advisors may appoint a grazing district treasurer and the board shall give notice, in writing, to the county treasurer of the appointment. The grazing district board of advisors shall require a bond of the grazing district treasurer and may pay for the same from the fund of the grazing district. The county treasurer shall then pay over to the grazing district treasurer all funds accruing to the grazing district, from time to time, as the county treasurer receives such funds. After payment of the funds to the grazing district treasurer by the county treasurer the grazing district and the grazing district treasurer shall be liable for such funds and all liability on the part of the state or county or county treasurer shall cease at that time. The grazing district treasurer shall deposit all such funds in a public depository, and shall expend such funds as provided for by law, and shall pay such funds out by checks signed by both the chairman of the board of the district advisors of the district and the district treasurer. In the event the grazing district board of advisors does not appoint a grazing district treasurer the county treasurer of any county in which a grazing district may be located, either in whole, or in part, shall be the ex officio district treasurer of any grazing district located in whole or in part within such county, and shall be liable upon his official bond for all money deposited in fund designated for that purpose. The county treasurer, as ex officio grazing district treasurer shall pay out such money in said fund upon the warrant of the grazing district located in whole, or in part, in his county, signed by the chairman of the board of district advisors of such grazing district and countersigned by the vice chairman. All moneys paid to any county having lands producing such moneys and not within a grazing district, shall be deposited with the county treasurer in a special fund to be known as "Range Improvement Fund" and expended by the board of county commissioners upon warrants for range improvements and maintenance, predatory animal control, rodent control, poisonous or noxious weed extermination or for any similar purpose in cooperation with the federal government or local livestock men's organizations.

History.

1937, ch. 28, § 2, p. 39; am. 1939, ch. 57,
§ 2, p. 102; am. 1974, ch. 195, § 1, p. 1503.

57-1203. Expenditure of funds — Purposes. — The money deposited in the range improvement fund of any county, or paid to any grazing district treasurer pursuant to the provisions of sections 57-1201 and 57-1202, Idaho Code, shall be expended as directed by the board of district advisors of such grazing district for range improvements and maintenance, predatory animal control, rodent control, poisonous or noxious weed extermination, or for any other purpose that is deemed to be most beneficial to the permittees from whom the funds are derived and for the counties involved in each district.

History.

1937, ch. 28, § 3, p. 39; am. 1974, ch. 195,
§ 2, p. 1503; am. 1994, ch. 249, § 1, p. 793.

57-1204. State grazing districts and boards authorized and created. — (1) For the purpose of receiving, directing and guiding the disposition of the range improvement fund of each grazing district concerned, in those manners most beneficial to the permittees from whom the funds are derived and to the counties concerned, there is hereby created a state board for each bureau of land management grazing district established and existing in Idaho on January 1, 1994, under the provisions of the Taylor grazing act.

(2) Each state board shall be known respectively as the grazing board in accordance with the following designations:

- (a) District No. 1 or Boise district;
- (b) District No. 2 or Burley district;
- (c) District No. 3 or Idaho Falls district;
- (d) District No. 4 or Salmon district;
- (e) District No. 5 or Shoshone district.

(3)(a) The members and the chairman of each of the state grazing boards for the year 1994, shall be the members and chairmen of each of the boards of district advisers of each grazing district elected, qualified and serving on January 1, 1994, under the provisions of the Taylor grazing act and the regulations promulgated under the provisions of that act. Each board shall be governed for the remainder of 1994, by the existing charter in place on January 1, 1994. Such members shall serve until their successors are elected and qualified as provided in this section.

(b) On and after January 1, 1995, each state grazing board shall consist of not less than five (5) nor more than twelve (12) stockmen who graze livestock upon the public lands within the grazing district for which such state grazing board is created. Each state grazing board may adopt its own charter, rules and regulations, or bylaws, governing the conduct of the board. Officers and directors of corporations and partners of partnerships which conduct such grazing are qualified to be elected to serve on such boards on behalf of such corporation or partnership. The term of each member beginning on or before January 1, 1995, is two (2) years. Beginning January 1, 1997, the term of each member shall be four (4) years.

(c) In November of 1996 and in November of each fourth year thereafter, each state grazing board shall specify the number of members to serve on that state grazing board for the following term. Thereafter, the board shall conduct an election of the members to serve for that term.

(d) If a new grazing district is established, the central committee of Idaho state grazing boards shall, within ninety (90) days from the declared establishment of said district, specify the number of members to serve on the state grazing board for the new district. Thereafter the central committee of the Idaho state grazing boards shall conduct an election of the board members to serve for the balance of the current term.

(e) If any vacancy occurs on a state grazing board for any reason, the

remaining board members shall elect a qualified successor to fill the vacancy for the unexpired term.

(f) A duly qualified person elected to serve as a member of a state district grazing board shall assume office after taking an oath for the performance of his duties. The permittees holding section 3, Taylor grazing act permits to graze livestock on the public lands within the grazing district served by a state district grazing board shall elect the members to serve on that state district grazing board, and each permittee or his designated representative is entitled to one (1) vote. Each state district grazing board shall set forth in its charter, rules and regulations, or bylaws, the procedure for the election of board members.

(g) Each state district grazing board shall select its own chairman and vice chairman. The secretary, treasurer, and any other employees, advisers, or consultants, may be appointed, hired, or contracted with by each board. The board shall set the remuneration of each individual or entity retained by the board and the remuneration shall be considered as administrative expense of the board concerned. The members of each state district grazing board may be compensated as provided in section 59-509(b), Idaho Code.

(h) Meetings of a state district grazing board may be called at any time by the chairman or a majority of the members of the board. The board shall meet at least twice each year. Each board may adopt its own rules and regulations for the calling and holding of meetings, but a majority of each board constitutes a quorum for the transaction of business by the board. Action by each board shall be determined by a majority vote of the members present.

History.

I.C., § 57-1204, as added by 1994, ch. 249,
§ 2, p. 793; am. 1995, ch. 113, § 1, p. 382.

STATUTORY NOTES

Cross References.

Grazing board central committee, § 57-1205.

Federal References.

The Taylor grazing act, referred to in subsection (1) and paragraphs (3)(a) and (f), is compiled as 43 U.S.C.S. § 315 et seq.

Compiler's Notes.

Section 3, Taylor grazing act permits, referred to in paragraph (3)(f), are permits issued to allow livestock to graze in a grazing district and the monies collected from the sale of such permits are to be used for grazing district improvements.

57-1205. Grazing board central committee — Powers and duties.
— (1) State district grazing boards may establish a central committee to act together in matters of common interest which shall be known as the Idaho state grazing boards central committee. The central committee shall consist of two (2) members selected by and from the membership of each of the state district grazing boards. The members so selected shall serve at the pleasure of their respective state district grazing boards.

(2) The central committee shall:

(a) Select its own officers, secretary, advisers and consultants and have such committees as it may deem necessary;

(b) Adopt its own rules for the calling and holding of meetings and the carrying out of such instructions as may be received from a majority of the state district grazing boards.

(3) State district grazing boards are authorized and empowered to make such use of the central committee as they deem proper. The central committee shall not engage in any activity or project except when and as authorized by a majority of the state district grazing boards. The central committee shall not incur any expense incident to its duties and activities except as authorized by a majority of the state district grazing boards.

History.

I.C., § 57-1205, as added by 1994, ch. 249,
§ 2, p. 793; am. 1995, ch. 113, § 2, p. 382.

CHAPTER 13

FOREST RESERVE AND MINING IMPACT FUNDS

SECTION.

57-1301. Apportionment of forest reserve funds.

57-1302. Records of county auditor.

57-1303. County apportionment of forest reserve funds.

SECTION.

57-1304. Use of such moneys.

57-1305. School districts to keep records and report.

57-1306. Impact funds.

57-1307. Distribution of revenues.

57-1301. Apportionment of forest reserve funds. — It shall be the duty of the state treasurer to receive any and all moneys paid or offered to be paid to him as such treasurer by the treasurer of the United States on account of the moneys received from such forest reserves, under and by virtue of the Act of Congress of June 30, 1906, and to keep a separate account of the sums received from each reserve, and to apportion the distributive shares of the same among the several counties in which such forest reserves are situated in proportion to the area of such reserve in such county, and to pay the same over to the several county treasurers of such counties as soon after the same is received as such apportionment can be made.

History.

1957, ch. 116, § 1, p. 194; am. 1980, ch. 137,
§ 2, p. 301.

STATUTORY NOTES

Cross References.

State treasurer, § 67-1201 et seq.

Federal References.

Act of Congress of June 30, 1906, referred to in this section, may be ch. 3913, 34 Stat. 684 which in part authorized the payment of 10% of the funds received from forest reserves to the states. This provision has been super-

seded by Act May 23, 1908, ch. 192, 35 Stat. 260 (16 U.S.C.S. § 500) which act is referred to in the title of the Idaho law enacting this section, S.L. 1957, ch. 116.

Compiler's Notes.

As enacted this chapter contained a heading which read: "Forest Reserve Funds."

RESEARCH REFERENCES

C.J.S. — 64A C.J.S., Municipal Corporations, §§ 2091 to 2095.

57-1302. Records of county auditor. — The county treasurer shall at once notify the county auditor of said apportionment, and county auditor shall enter the same in the appropriate records of his office, showing the status of such moneys in each school district in said county.

History.

1957, ch. 116, § 2, p. 194.

57-1303. County apportionment of forest reserve funds. — The auditor of each county receiving a portion of this fund shall within ten (10) days of receipt of this money allot and distribute seventy per cent (70%) of this money to the county general road fund and to the treasurer of the highway districts and good road districts in the county in proportion to the mileage of each within the county, to be expended for the construction and repair of roads and bridges, and thirty per cent (30%) to the various school districts and joint county school districts within the county in proportion to the number of pupils in average daily attendance in each district in the year immediately prior to this distribution. The distribution of such moneys to the respective school districts entitled thereto shall be in addition to and without regard to any assistance to such school districts from any and all other sources in maintaining the minimum educational program and minimum transportation program.

History.

1957, ch. 116, § 3, p. 194; am. 1963, ch. 65, § 1, p. 253; am. 1980, ch. 87, § 1, p. 190.

STATUTORY NOTES**Effective Dates.**

Section 2 of S.L. 1963, ch. 65 declared an emergency. Approved March 7, 1963.

57-1304. Use of such moneys. — The school portion of this money may be retained, accumulated and expended for the purchase of school sites and for the construction and remodeling of school buildings within the discretion of the trustees of the respective school districts; provided, that when, within the discretion of the trustees of the respective school districts, such moneys are not so needed they may be expended for current expenses.

History.

1957, ch. 116, § 4, p. 194.

57-1305. School districts to keep records and report. — Each school district receiving such moneys shall keep an accurate record of receipts thereof and expenditures therefrom and shall report the same

annually to the state department of education in the format prescribed by the state board of education.

History.

1957, ch. 116, § 5, p. 194; am. 1979, ch. 297,
§ 1, p. 779.

STATUTORY NOTES**Cross References.**

State board of education, § 33-101 et seq.

Effective Dates.

Section 7 of S.L. 1957, ch. 116 declared an emergency. Approved March 1, 1957.

57-1306. Impact funds. —

(1)(a) Upon receipt of any moneys from the federal government from sales, royalties, bonuses or rentals of oil, gas or mineral lands of the federal government, the state treasurer shall remit ten percent (10%) of such receipts to the general fund of the several counties from which the resources were extracted. The state treasurer shall compute a particular county's share of such receipts by computing the proportion of the moneys generated by sales, royalties, bonuses or rentals of federal lands situated within that particular county to the total of moneys received from the federal government from sales, royalties, bonuses or rentals of all oil, gas or mineral lands of the federal government within the state of Idaho for the same period. The moneys remitted to the various counties according to the provisions of this section shall be used for the construction and maintenance of public roads or for the support of public schools.

(b) The remaining ninety percent (90%) of any moneys received from the federal government from sales, royalties, bonuses or rentals of oil, gas or mineral lands of the federal government shall be deposited into the public school income fund, pursuant to the provisions of section 33-903, Idaho Code.

(2)(a) The state treasurer shall remit ten percent (10%) of any moneys received from the sale, royalties, bonuses or rental of renewable energy resources on lands of the federal government to the general fund of the several counties from which the resources were developed. The state treasurer shall compute a particular county's share of such receipts by computing the proportion of the moneys generated by sales, royalties, bonuses or rentals of federal lands situated within that particular county to the total of moneys received from the federal government from sales, royalties, bonuses or rentals of all renewable energy resource lands of the federal government within the state of Idaho for the same period. The moneys remitted to the various counties according to the provisions of this section shall be used for the construction and maintenance of public roads or for the support of public schools.

(b) The remaining ninety percent (90%) of any moneys received from the sale, royalties, bonuses or rental of renewable energy resources on lands of the federal government shall be deposited by the state treasurer into

the renewable energy resources fund which is hereby created. Any interest earned on the investment of idle moneys in the renewable energy resources fund shall be returned to the fund. Moneys in the renewable energy resources fund may be expended pursuant to appropriation and may be used by the administrator of the office of energy resources consistent with duties, powers and authorities of the office.

(3) For the purposes of this section, "renewable energy resources" shall only include geothermal, wind and solar resources.

History.

I.C., § 57-1306, as added by 1976, ch. 28,
§ 2, p. 63; am. 2008, ch. 206, § 1, p. 659.

STATUTORY NOTES

Cross References.

State treasurer, § 67-1201 et seq.

nated former subsection (2) as paragraph (1)(b); and added subsections (2) and (3).

Amendments.

The 2008 amendment, by ch. 206, rewrote the section catchline, which formerly read: "Mining leases impact funds to county"; added the (1)(a) designation, and redesignig-

Compiler's Notes.

The governor's office of energy resources, referred to in paragraph (2)(b), is responsible for energy planning, policy, and coordination in the state of Idaho. See <http://www.energy.idaho.gov>.

57-1307. Distribution of revenues. — All moneys received by the state treasurer under the provisions of chapter 12 and chapter 13, title 57, Idaho Code, for transmittal to other units or departments of government shall be expeditiously paid to the units or departments as soon as distribution information is received from the appropriate agency of the federal government. To accomplish expeditious payment the division of financial management, and the state controller, shall immediately carry out their duties.

If a payment under the provisions of chapter 12 or chapter 13, title 57, Idaho Code, has been made in error to other units or departments due to erroneous information received from the appropriate agency of the federal government or due to any other reason, the state treasurer shall either make the necessary adjustments in the next distribution to said units or departments, or shall expeditiously demand refunds from those units or departments which were overpaid and such units or departments shall pay such refunds expeditiously to the state treasurer.

History.

I.C., § 57-1307, as added by 1980, ch. 137,

§ 3, p. 301; am. 1988, ch. 78, § 1, p. 136; am. 1994, ch. 180, § 117, p. 420.

STATUTORY NOTES

Cross References.

Division of financial management, § 67-1910.

State controller, § 67-1001 et seq.

State treasurer, § 67-1201 et seq.

Effective Dates.

Section 2 of S.L. 1988, ch. 78 declared an emergency. Approved March 22, 1988.

Section 241 of S.L. 1994, ch. 180 provided that such act should become effective on and

after the first Monday in January, 1995 [January 2, 1995] if the amendment to the Constitution of Idaho changing the name of the state auditor to state controller [1994 S.J.R. No. 109, p. 1493] was adopted at the general

election held on November 8, 1994. Since such amendment was adopted, the amendment to this section by § 117 of S.L. 1994, ch. 180 became effective January 2, 1995.

CHAPTER 14

RURAL REHABILITATION FUNDS

SECTION.

57-1401. Purpose of law.

57-1402. Director of department of agriculture authorized to receive trust funds.

57-1403. Agreements for use of funds in Idaho.

SECTION.

57-1404. Receipt of funds by director — Use.

57-1405. Powers of director of the department of agriculture.

57-1406. No liability for transfer of funds to state.

57-1401. Purpose of law. — It is hereby declared, as a matter of legislative determination, that agriculture in Idaho is in dire need of additional facilities and funds for rural rehabilitation purposes and that in the interest of the public welfare and general prosperity of the people of the state of Idaho that agriculture should be maintained and encouraged by having at its disposal those federal funds allotted to Idaho for rural rehabilitation purposes.

History.

1961, ch. 304, § 1, p. 565.

RESEARCH REFERENCES

C.J.S. — 64A C.J.S., Municipal Corporations, §§ 2091 to 2095.

57-1402. Director of department of agriculture authorized to receive trust funds. — The director of the department of agriculture is hereby designated as that official of the state of Idaho authorized to make application to and receive from the secretary of agriculture of the United States, or any other proper federal official, pursuant and subject to the provisions of Public Law 499, 81st Congress, approved May 3, 1950, the trust assets, either funds or property, held by the United States as trustee in behalf of the Idaho Rural Rehabilitation Corporation.

History.

1961, ch. 304, § 2, p. 565; am. 1974, ch. 18, § 227, p. 364.

STATUTORY NOTES

Cross References.

Director of department of agriculture, § 22-101.

Federal References.

Public Law 499 of the 81st Congress, re-

ferred to in this section, was codified as 40 U.S.C.S. §§ 440 to 444. However, the revision of Title 40 of the United States Code by P.L. 107-217 in 2002 eliminated these sections from the code.

57-1403. Agreements for use of funds in Idaho. — The director is authorized to enter into agreements with the secretary of agriculture of the United States pursuant to section 2(f) of the aforesaid Act of the Congress of the United States, upon such terms and conditions and for such periods of time as may be mutually agreeable, authorizing the secretary of agriculture of the United States to accept, administer, expend and use in the state of Idaho all or any part of such trust assets or any other funds of the state of Idaho which may be appropriated for such uses for carrying out the purposes of Title I and II of the Bankhead-Jones Farm Tenant Act, in accordance with the applicable provisions of Title IV thereof, as now or hereafter amended, and to do any and all things necessary to effectuate and carry out the purposes of said agreements.

History.

1961, ch. 304, § 3, p. 565; am. 1974, ch. 18,
§ 228, p. 364.

STATUTORY NOTES

Cross References.

Director of department of agriculture, § 22-101.

Federal References.

Section 2(f) of the federal act, referred to in this section, was codified as 40 U.S.C.S. § 440, but was eliminated from the United States Code in the revision of Title 40 by P.L. 107-217 in 2002.

Titles I, II and IV of the Bankhead-Jones

Farm Tenant Act were formerly found in 7 U.S.C.S. §§ 1001 to 1006, 1006c to 1006e, 1007, 1008, 1009, 1014 to 1029. All of such sections except §§ 1006 and 1026 were repealed by Act August 8, 1961, P.L. 87-128, Title III, § 341a, 75 Stat. 318. Section 1006 was omitted from Title I by Act August 14, 1946, ch. 964, § 4, 60 Stat. 1071. Section 1026 was repealed by Act June 25, 1948, ch. 645, § 21, 62 Stat. 862. For present law, see 7 U.S.C.S. § 1921 et seq.

57-1404. Receipt of funds by director — Use. — Notwithstanding any other provisions of law, funds and the proceeds of the trust assets which are not authorized to be administered by the secretary of agriculture of the United States under the provisions of section 57-1403, Idaho Code, shall be received by the director and deposited by him in the state treasury in a special fund for obligation and expenditure by the director for the purposes of section 57-1403, Idaho Code, or for use by the director for such of the rural rehabilitation purposes permissible under the charter of the now dissolved Idaho Rural Rehabilitation Corporation as may from time to time be agreed upon by the director and the secretary of agriculture of the United States, subject to the applicable provisions of said Public Law 499.

History.

1961, ch. 304, § 4, p. 565; am. 1974, ch. 18,
§ 229, p. 364.

STATUTORY NOTES

Federal References.

Public Law 499 of the 81st Congress, referred to in this section, was codified as 40 U.S.C.S. §§ 440 to 444. However, the revision

of Title 40 of the United States Code by P.L. 107-217 in 2002 eliminated these sections from the code.

57-1405. Powers of director of the department of agriculture. — The director of agriculture is authorized and empowered to:

(a) Collect, compromise, adjust or cancel claims and obligations arising out of or administered under this act or under any mortgage, lease, contract or agreement entered into or administered pursuant to this act and, if in his judgment, necessary and advisable, pursue the same to final collection in any court having jurisdiction.

(b) Bid for and purchase at any execution, foreclosure or other sale, or otherwise to acquire property upon which the director has a lien by reason of a judgment or execution, or which is pledged, mortgaged, conveyed or which otherwise secures any loan or other indebtedness owing to or acquired by the director under this act, and

(c) Accept title to any property so purchased or acquired; to operate or lease such property for such period as may be deemed necessary to protect the investment therein; and to sell or otherwise dispose of such property in a manner consistent with the provisions of this act.

The authority herein contained shall be delegated to the secretary of agriculture of the United States with respect to funds or assets authorized to be administered and used by him under agreements entered into pursuant to section 57-1403, Idaho Code.

History.

1961, ch. 304, § 5, p. 565; am. 1974, ch. 18, § 230, p. 364.

STATUTORY NOTES

Cross References.

Director of department of agriculture, § 22-101.

304, which is compiled as §§ 57-1401 to 57-1406.

Compiler's Notes.

The term "this act" refers to S.L. 1961, ch.

57-1406. No liability for transfer of funds to state. — The United States and the secretary of agriculture thereof, shall be held free from liability by virtue of the transfer of the assets to the director of the department of agriculture of the state of Idaho pursuant to this act.

History.

1961, ch. 304, § 6, p. 565; am. 1974, ch. 18, § 231, p. 364.

STATUTORY NOTES

Cross References.

Director of department of agriculture, § 22-101.

Compiler's Notes.

The term "this act" refers to S.L. 1961, ch. 304, which is compiled as §§ 57-1401 to 57-1406.

Section 7 of S.L. 1961, ch. 304 read: "If any

one or more provisions of this law shall ever be held invalid for any reason, such holding shall not affect the enforceability of the remaining provisions of this law."

Effective Dates.

Section 263 of S.L. 1974, ch. 18 provided that the act should take effect on and after July 1, 1974.

CHAPTER 15

WATERWAYS IMPROVEMENT FUND

SECTION.

57-1501. Waterways improvement fund created — Purpose.

57-1502. Fund administered by park and recreation board.

SECTION.

57-1503. Waterways improvement fund advisory committee.

57-1501. Waterways improvement fund created — Purpose. —

There is hereby created a fund to be known and designated as the "Waterways Improvement Fund" of the state of Idaho, which fund shall be administered by the park and recreation board and shall be used for the protection and promotion of safety, waterways improvement, creation and improvement of parking areas for boating purposes, making and improving boat ramps and moorings, marking of waterways, search and rescue, and all things incident to such purposes including the purchase of real and personal property.

Provided that no such improvements shall be constructed in any county of this state without the approval of the county waterway committee of the plans for such improvements.

History.

1963, ch. 174, § 3, p. 500; am. 1969, ch. 168, § 1, p. 502; am. 1974, ch. 8, § 24, p. 35.

STATUTORY NOTES

Cross References.

Park and recreation board, § 67-4221 to 67-4225.

Legislative Intent.

Section 1 of S.L. 1963, ch. 174 read: "The legislature hereby finds a fact that of all the taxes collected under section 49-1210 (repealed by S.L. 1973, ch. 260, § 2) and section 49-1231, Idaho Code, 1.4% are derived from

motor fuels and special fuels used for marine purposes to propel vessels on the inland and surrounding waterways of this state and that .4% is sufficient to pay the costs of administration and claimed refunds by marine users of special fuels. The legislature hereby declares that it is the policy of this state to use the funds derived from the sale of motor fuels and special fuels for marine use to improve boating facilities throughout the state."

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Moneys in the state waterways improvement fund may be expended for land based projects, but must be for the primary benefit of boaters engaging in boating activities, and must fall within or be incidental to the following categories: protection and promotion of safety; waterways improvement; development/improvement of boating related parking, ramps, or moorings; waterways marking; search and rescue. Permissible expenditures would include, but are not limited to, boat

docks, ramps, pump out facilities, restrooms, camping facilities and picnic areas which are primarily accessed by boat, and items incidental to such development, including landscaping. OAG 89-11.

The expenditure of moneys in the state waterways improvement fund (WIF) on the construction and/or maintenance of roads is repugnant to the WIF funding scheme. OAG 89-11.

57-1502. Fund administered by park and recreation board. —

Commencing with the passage and approval of this act, all moneys in or

hereafter to come into the waterways improvement fund, which fund was created by Senate Bill No. 256 enacted by the Thirty-seventh Session of the Idaho Legislature, are hereby appropriated to, and are to be administered by the park and recreation board for the purpose of carrying out the provisions of the act which created the waterways improvement fund. All appropriations now or hereafter made shall be subject to the provisions of the Standard Appropriations Act of 1945.

History.

1963, ch. 376, § 1, p. 1057; am. 1969, ch. 168, § 2, p. 502; am. 1974, ch. 8, § 25, p. 35.

STATUTORY NOTES**Cross References.**

Park and recreation board, § 67-4221 to 67-4225.

Standard Appropriations Act of 1945, § 67-3601 et seq.

Compiler's Notes.

The phrase "the passage and approval of this act" refers to the passage and approval of S.L. 1963, ch. 376, which was approved on March 29, 1963, and effective May 18, 1963.

Senate Bill 256, referred to in this section, is ch. 174 of S.L. 1963 compiled as § 57-1501.

Effective Dates.

Section 3 of S.L. 1969, ch. 168 declared an emergency. Approved March 14, 1969.

Section 26 of S.L. 1974, ch. 8 provided that the act should take effect on and after July 1, 1974.

57-1503. Waterways improvement fund advisory committee. —

The park and recreation board of the department of parks and recreation shall appoint a six (6) member advisory committee which shall be compensated as provided in section 59-509(f), Idaho Code. The committee shall act in an advisory capacity to the department on matters relating to evaluation of applications for grants to be awarded from the state waterways improvement fund. Criteria for determining awards shall be as prescribed by the department. One (1) member shall be chosen from each of the districts described in section 67-4221, Idaho Code. Each member shall be an active recreational boater and be a resident of the region. The terms of the appointment shall be three (3) years, except that the initial appointees shall commence on the date of appointment and shall be of staggered lengths so that the term of two (2) members will expire annually.

History.

I.C., § 57-1503, as added by 1994, ch. 68, § 2, p. 140; am. 2006, ch. 229, § 1, p. 683.

STATUTORY NOTES**Cross References.**

Park and recreation board, § 67-4221 to 67-4225.

Waterways improvement fund, § 57-1501.

Amendments.

The 2006 amendment, by ch. 229, substituted "park and recreation board" for "director."

CHAPTER 16

GOVERNOR'S EMERGENCY FUND

SECTION.

57-1601. Creation of governor's emergency fund — Use — Disposition.

57-1601. Creation of governor's emergency fund — Use — Disposition. — There is hereby created in the state treasury the governor's emergency fund, which shall consist of such sums as may be appropriated for that purpose by the legislature. Moneys in the fund may be expended by the governor in any emergency which was not foreseen or reasonably foreseeable by the legislature and which may arise in carrying on the essential functions of state government and in protecting the interests of the state which have been impaired by such emergency. Any unexpended balance in the fund at the end of each fiscal year shall remain in the fund.

Not later than January 15 of each year, the governor shall report to the legislature the expenditures and disbursements made from the fund during the preceding fiscal year, and the expenditures and disbursements and/or commitments made during the current fiscal year to date.

History.

1968 (2nd E.S.), ch. 2, § 1, p. 11; am. 1973, ch. 130, § 1, p. 248.

STATUTORY NOTES

Effective Dates.

Section 2 of S.L. 1968 (2nd E.S.), ch. 2 declared an emergency. Approved February 7, 1968.

Section 2 of S.L. 1973, ch. 130 declared an emergency. Approved March 14, 1973.

CHAPTER 17

CENTRAL CANCER REGISTRY FUND

SECTION.

57-1701. Creation of central cancer registry fund — Purpose.
57-1702. Cancer control account.
57-1703. Cancer registry — Definitions.

SECTION.

57-1704. Establishment of cancer registry.
57-1705. Participation in program.
57-1706. Confidentiality.
57-1707. Liability.

57-1701. Creation of central cancer registry fund — Purpose. — There is hereby created and established in the state treasury a fund to be known as the "central cancer registry fund" to which shall be deposited the revenues derived from the tax imposed in section 63-2506, Idaho Code. All moneys now or hereafter in the central cancer registry fund are hereby dedicated for the purpose of contracting for and obtaining the services of a continuous registry of all cancer patients in the state of Idaho and maintaining cooperative exchange of information with other states providing similar cancer registry. The department of health and welfare is charged with the administration of this fund for the purposes specified herein. The

amount of money credited to the central cancer registry fund from the tax imposed in section 63-2506, Idaho Code, shall not exceed the distribution provided in section 63-2520(b)(3) [63-2520(b)(2)], Idaho Code, and the current fiscal year's appropriation, and any moneys in excess thereof derived from this tax shall be credited to the general fund. All claims against the fund shall be examined, audited and allowed in the manner now or hereafter provided by law for claims against the state of Idaho.

History.

1972, ch. 150, § 1, p. 324; am. 1975, ch. 56, § 1, p. 120; am. 1994, ch. 45, § 1, p. 73; am.

1995, ch. 67, § 2, p. 170; am. 2000, ch. 132, § 37, p. 309.

STATUTORY NOTES**Cross References.**

Department of health and welfare, § 56-1001 et seq.

Compiler's Notes.

The bracketed insertion in this section was added by the compiler to reflect the amendment of § 63-2520 by S.L. 2000, ch. 60, § 2.

Effective Dates.

Section 39 of S.L. 2000, ch. 132 provided: "This act shall be in full force and effect on and after July 1, 2000, except that the Division of Environmental Quality shall have one (1) year thereafter to accomplish necessary changes to complete the physical transition to the new department."

57-1702. Cancer control account. — There shall be established in the dedicated fund in the state treasury the cancer control account, to which shall be credited the revenues derived from the tax distributed by subsection (b)(3) of section 63-2520, Idaho Code. All moneys now or hereafter in the cancer control account, to the extent appropriated, are hereby dedicated for the purpose of contracting for and obtaining the services to promote cancer control for the citizens of Idaho, through research, education, screening and treatment. The director of the department of health and welfare is charged with the administration of moneys appropriated from the account unless otherwise provided by law.

History.

I.C., § 57-1702, as added by 1979, ch. 33, § 1, p. 48; am. 1987, ch. 339, § 6, p. 715.

57-1703. Cancer registry — Definitions. — (1) "Cancer" means all in situ or malignant neoplasms diagnosed by histology, radiology, laboratory testing, clinical observation, autopsy or suggestible by cytology, but excluding basal cell and squamous cell carcinoma of the skin unless occurring on a mucous membrane and excluding in situ neoplasms of the cervix.

(2) "Reportable benign tumors" means noncancerous neoplasms occurring in the brain, meninges, pineal gland or pituitary gland.

(3) "Confidential information" refers to information which may identify a cancer patient, health care facility or health care provider.

(4) "Contractor" means that individual, partnership, corporation or other entity performing cancer registry services under a contractual agreement with the department.

(5) "Department" means the Idaho department of health and welfare.

(6) "Population-based" refers to all cancers and reportable benign tumors

diagnosed and/or treated within the state of Idaho by hospitals or other facilities providing screening, diagnostic or therapeutic services to patients with respect to cancer, and from physicians, surgeons, and all other health care providers diagnosing or providing treatment for cancer patients.

History.

I.C., § 57-1703, as added by 1995, ch. 67,
§ 3, p. 170; am. 1999, ch. 76, § 1, p. 220.

57-1704. Establishment of cancer registry. — (1) The department, or an authorized contractor of the department, shall maintain a uniform statewide population-based cancer registry system for the collection of data pertaining to the incidence, prevalence, management, survival, mortality, geographic distribution and risk factors associated with cancer and reportable benign tumors.

(2) All cancers and reportable benign tumors diagnosed or treated in the state shall be reported to the department or the authorized contractor of the department.

(3) Data reported to the cancer registry shall be available for use in aggregate form for analysis, benchmarking, and reports of Idaho's cancer incidence, prevalence, management, survival, mortality, health status, geographic distribution, and risk factors in comparison to the nation.

History.

I.C., § 57-1704, as added by 1995, ch. 67,
§ 4, p. 170.

57-1705. Participation in program. — (1) Primary reporting:

(a) Any hospital, outpatient surgery center, radiation treatment center, or treatment clinic diagnosing and/or treating a patient with cancer or a reportable benign tumor, on an inpatient or outpatient basis, shall report each case of cancer or reportable benign tumor to the department or the authorized contractor of the department within one hundred eighty (180) days of diagnosis.

(b) Independent pathology and cytology laboratories shall report each diagnosis of cancer or reportable benign tumor to the department or the authorized contractor within one hundred eighty (180) days of specimen analysis.

(2) Secondary reporting: In the event that a case of cancer or reportable benign tumor was not diagnosed or treated within a hospital, outpatient surgery center, radiation treatment center, or treatment clinic, the department or authorized contractor may request the case be reported by a physician's office.

(3) Each report of cancer or reportable benign tumor shall include information as defined by the department or the authorized contractor.

(4) The department or authorized contractor of the department shall have physical access to all records which would identify reportable cases and/or establish characteristics, treatment or medical status of reportable cases in the event that there has been a failure to report as delineated in subsections (1), (2) and (3) of this section or for the purpose of subsequent

quality control studies and research projects conducted by the department or the authorized contractor.

(5) Nothing in this chapter shall prevent the department or authorized contractor from identifying and reporting cases using data linkages with death records, statewide cancer registries, and other potential sources.

History.

I.C., § 57-1705, as added by 1995, ch. 67,
§ 5, p. 170.

57-1706. Confidentiality. — (1) The department and authorized contractor will take measures to ensure that all identifying information is kept confidential.

(2) The department and authorized contractor may enter into agreements to exchange confidential information with other states' cancer registries in order to obtain complete reports of Idaho residents diagnosed or treated in other states and to provide information to other states regarding their residents diagnosed or treated in Idaho.

(3) The department and authorized contractor may furnish confidential information to other cancer registries, federal cancer control programs, or health researchers in order to collaborate research studies. Disclosure of confidential information for research purposes must comply with policies and protocols of the department and/or authorized contractor of the department.

History.

I.C., § 57-1706, as added by 1995, ch. 67,
§ 6, p. 170.

57-1707. Liability. — (1) No action for damages arising from the disclosure of confidential or privileged information may be maintained against any reporting entities or employees of such entities that participate in good faith in the reporting of cancer registry data in accordance with this chapter.

(2) No license of a health care facility or health care provider may be denied, suspended or revoked for the good faith disclosure of confidential or privileged information in accordance with this chapter.

(3) The immunity granted in subsections (1) and (2) of this section shall not be construed to apply to the unauthorized disclosure of confidential or privileged information when such disclosure is due to gross negligence or willful misconduct of the reporting entities.

History.

I.C., § 57-1707, as added by 1995, ch. 67,
§ 7, p. 170.

CHAPTER 18

PARK AND RECREATION CAPITAL IMPROVEMENT
ACCOUNT

SECTION.

57-1801. Creation of park and recreation cap-

ital improvement account —
Purpose.

57-1801. Creation of park and recreation capital improvement account — Purpose. — There is hereby created and established in the state treasury an account to be known as the “park and recreation capital improvement account” to which shall be credited or deposited all moneys accruing for the purposes of the account. The purposes for which moneys in the account may be used shall be to acquire, purchase, maintain, improve, repair, furnish, and equip parks and recreation facilities and sites in the state of Idaho. The park and recreation board is charged with the administration of the account for the purposes specified herein. The provisions of section 67-4228, Idaho Code, are made applicable for the provisions of this section. All claims against the account shall be examined, audited and allowed in the same manner now or hereafter provided by law for claims against the state.

History.

1973, ch. 297, § 1, p. 625; am. 1983, ch. 158,
§ 7, p. 436; am. 1988, ch. 253, § 2, p. 487.

STATUTORY NOTES

Cross References.

Park and recreation board, § 67-4221 to
67-4225.

this act should take effect on and after July 1,
1974.

Effective Dates.

Section 4 of S.L. 1973, ch. 297 provided that

OPINIONS OF ATTORNEY GENERAL

The legislature has made a determination that a percentage of fuel tax revenue generated statewide shall be allocated to the park and recreation capital improvement account established pursuant to this section. The ex-

penditure of capital improvement funds is left to the discretion of the board. The board's discretion remains subject to the legislative and budgetary process. OAG 96-4.

CHAPTER 19

OFF-ROAD MOTOR VEHICLE FUND

SECTION.

57-1901. Creation of off-road motor vehicle
account — Purpose.

57-1901. Creation of off-road motor vehicle account — Purpose. — There is hereby created and established in the state treasury an account to be known as the “off-road motor vehicle account” to which shall be

credited or deposited all moneys accruing for the purposes of the account. The purposes for which moneys in the account may be used shall be to acquire, purchase, improve, repair, maintain, furnish, and equip off-road motor vehicle facilities and sites or areas used by off-road vehicles on public or private land, and to assist with the enforcement of laws and regulations governing the use of off-road vehicles in the state of Idaho. The park and recreation board is charged with the administration of the account for the purposes specified herein. The provisions of section 67-4228, Idaho Code, are made applicable for the provisions of this section. All claims against the account shall be examined, audited and allowed in the same manner now or hereafter provided by law for claims against the state, except that the board is hereby empowered to enter into agreements with legal governmental agencies in Idaho, for the disbursement of funds to them on a project by project basis.

History.

1973, ch. 297, § 2, p. 625; am. 1976, ch. 258, § 1, p. 877; am. 1988, ch. 253, § 3, p. 487.

STATUTORY NOTES

Cross References.

Park and recreation board, § 67-4221 to 67-4225.

the act should take effect on and after July 1, 1974.

Effective Dates.

Section 4 of S.L. 1973, ch. 297 provided that

CHAPTER 20

TRAUMA REGISTRY

SECTION.

57-2001. Purpose of the registry.
57-2002. Trauma registry — Definitions.
57-2003. Establishment of trauma registry.
57-2004. Participation in program.

SECTION.

57-2005. Creation of trauma registry fund — Purpose.
57-2006. Confidentiality.
57-2007. Liability.

57-2001. Purpose of the registry. — (1) The specific issues to be identified and evaluated through the trauma registry are:

- (a) Injury surveillance;
- (b) Geographic patterns of trauma incidence;
- (c) Types of injuries treated in hospitals in Idaho;
- (d) Areas or regions of the state where improvements in the emergency medical system may be needed;
- (e) Public education and prevention needs and efforts; and
- (f) Other factors to consider in recommending, designing or implementing a statewide trauma system.

(2) The data collected by the trauma registry shall be of such a nature as to allow the department to identify at least the following:

- (a) Access to care;
- (b) Performance of the out-of-hospital and hospital emergency medical systems;

- (c) Costs of trauma care; and
- (d) Outcomes of persons who are victims of trauma.

(3) The department shall evaluate the data collected, as well as data collected from other relevant sources, and, beginning one (1) year after the effective date of this chapter, shall prepare an annual report.

History.

I.C., § 57-2001, as added by 2002, ch. 329,
§ 2, p. 928.

STATUTORY NOTES

Compiler's Notes.

The phrase "the effective date of this chapter" in subsection (3) refers to the effective date of S.L. 2002, ch. 329, which was effective July 1, 2002.

Section 4 of S.L. 2002, ch. 329 provides: "This act shall be in full force and effect on and after January 1, 2003, provided that for purposes of promulgation of rules as provided

in section 57-2003, Idaho Code, this act shall be in full force and effect on and after July 1, 2002."

Section 5 of S.L. 2002, ch. 329 provides: "The provisions of this act shall be null, void and of no force and effect on and after January 1, 2008." However, § 5 of S.L. 2002, ch. 329 was repealed by S.L. 2007, ch. 242, § 1, effective July 1, 2007.

57-2002. Trauma registry — Definitions. — When used in this chapter:

(1) "Confidential information" means information which may identify a patient, health care facility or health care practitioner.

(2) "Contractor" means that individual, partnership, corporation or other entity performing trauma registry services under a contractual agreement with the department.

(3) "Deidentified information" means records and information contained in the trauma registry, including compilations and analyses thereof, which does not contain information which might identify a patient, health care facility or health care practitioner.

(4) "Department" means the bureau of emergency medical services of the Idaho department of health and welfare.

(5) "Trauma" is the result of an act or event that damages, harms or hurts a human being resulting in intentional or unintentional damage to the body resulting from acute exposure to mechanical, thermal, electrical, or chemical energy or from the absence of such essentials as heat or oxygen.

(6) "Trauma registry" means the population based data system that provides ongoing and systematic collection, analysis, interpretation, and dissemination of information related to injury for system improvement, prevention and research activities. Elements in the registry shall describe the nature and scope of the injury problem, identify the incidence and prevalence of traumatic injury, severity of injury, performance of out-of-hospital and hospital emergency medical systems, patient outcome, and the impact of trauma on the health care system.

(7) "Trauma system" means the organized approach to treating injured patients that establishes and promotes standards for patient transportation, equipment, and information analysis for effective and coordinated trauma care. Trauma systems represent a continuum of care that is fully integrated into the emergency medical services system and is a coordinated

effort between out-of-hospital and hospital providers with the close cooperation of medical specialists in each phase of care. The focus is on prevention, coordination of acute care, and aggressive rehabilitation. Ideally, systems are designed to be inclusive of all injured patients requiring acute care facilities, striving to meet the needs of the patient, regardless of the severity of injury, geographic location or population density. Ultimately, a trauma system seeks to prevent injuries from happening and the reduction of death and disability when it does happen.

History.

I.C., § 57-2002, as added by 2002, ch. 329,
§ 2, p. 928.

STATUTORY NOTES**Compiler's Notes.**

Section 4 of S.L. 2002, ch. 329 provides: "This act shall be in full force and effect on and after January 1, 2003, provided that for purposes of promulgation or rules as provided in section 57-2003, Idaho Code, this act shall be in full force and effect on and after July 1, 2002."

Section 5 of S.L. 2002, ch. 329 provides: "The provisions of this act shall be null, void and of no force and effect on and after January 1, 2008." However, § 5 of S.L. 2002, ch. 329 was repealed by S.L. 2007, ch. 242, § 1, effective July 1, 2007.

57-2003. Establishment of trauma registry. — The department, or an authorized contractor of the department, shall:

(1) Establish a trauma registry to collect and analyze information on the incidence, severity, causes and outcomes of trauma, and other such data necessary to evaluate trauma and the health system's response to it;

(2) Establish the data elements and data dictionary, including child specific data elements that hospitals must report, and the time frame and format for reporting by adoption of rules in the manner provided in chapter 52, title 67, Idaho Code;

(3) Support, where necessary, data collection and abstraction by providing:

(a) A data collection system and technical assistance to each hospital; and

(b) Funding or, at the discretion of the department, personnel for collection and abstraction for each hospital.

History.

I.C., § 57-2003, as added by 2002, ch. 329,
§ 2, p. 928.

STATUTORY NOTES**Compiler's Notes.**

Section 4 of S.L. 2002, ch. 329 provides: "This act shall be in full force and effect on and after January 1, 2003, provided that for purposes of promulgation of rules as provided in section 57-2003, Idaho Code, this act shall be in full force and effect on and after July 1, 2002."

Section 5 of S.L. 2002, ch. 329 provides: "The provisions of this act shall be null, void and of no force and effect on and after January 1, 2008." However, § 5 of S.L. 2002, ch. 329 was repealed by S.L. 2007, ch. 242, § 1, effective July 1, 2007.

57-2004. Participation in program. — (1) Each licensed hospital shall report each case of trauma which meets the inclusion criteria to the department or the authorized contractor of the department within one hundred eighty (180) days of treatment.

(2) Each report of trauma shall include information as defined by the department.

(3) The department or authorized contractor of the department shall have physical access to all records which would identify reportable cases and/or establish characteristics, treatment or medical status of reportable cases in the event that there has been a failure to report as delineated in subsections (1) and (2) of this section.

(4) Nothing in this chapter shall prevent the department or authorized contractor from identifying and reporting cases using data linkages with death records, other trauma registries, and other potential sources.

History.

I.C., § 57-2004, as added by 2002, ch. 329,
§ 2, p. 928.

STATUTORY NOTES

Compiler's Notes.

Section 4 of S.L. 2002, ch. 329 provides: "This act shall be in full force and effect on and after January 1, 2003, provided that for purposes of promulgation of rules as provided in section 57-2003, Idaho Code, this act shall be in full force and effect on and after July 1, 2002."

Section 5 of S.L. 2002, ch. 329 provides: "The provisions of this act shall be null, void and of no force and effect on and after January 1, 2008." However, § 5 of S.L. 2002, ch. 329 was repealed by S.L. 2007, ch. 242, § 1, effective July 1, 2007.

57-2005. Creation of trauma registry fund — Purpose. — There is hereby created and established in the state treasury a fund to be known as the "Trauma Registry Fund" to which shall be deposited the revenues derived from grants, appropriations or other sources of funds. All moneys now or hereafter in the trauma registry fund are hereby dedicated for the purpose of contracting for and obtaining the services of a continuous registry of all trauma incident patients in the state of Idaho and maintaining cooperative exchange of information with other states providing a similar trauma incident registry. The department of health and welfare, bureau of emergency medical services, is charged with the administration of this fund for the purposes specified herein. All claims against the fund shall be examined, audited and allowed in the manner now or hereafter provided by law for claims against the state of Idaho.

History.

I.C., § 57-2005, as added by 2002, ch. 329,
§ 2, p. 928.

STATUTORY NOTES

Compiler's Notes.

Section 4 of S.L. 2002, ch. 329 provides: "This act shall be in full force and effect on

and after January 1, 2003, provided that for purposes of promulgation of rules as provided in section 57-2003, Idaho Code, this act shall

be in full force and effect on and after July 1, 2002.”

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and of no force and effect on and after January 1, 2008.” However, § 5 of S.L. 2002, ch. 329 was repealed by S.L. 2007, ch. 242, § 1, effective July 1, 2007.

57-2006. Confidentiality. — (1) Information and records contained in the trauma registry shall be kept confidential and may be released only as provided by this chapter and the rules of the department.

(2) The department and authorized contractor may enter into agreements to exchange confidential information with other trauma registries in order to obtain complete reports of Idaho residents treated in other states and to provide information to other states regarding their residents treated in Idaho. Agreements sharing information from the trauma registry shall include a provision requiring the receiving agency to keep such information confidential.

(3) The department and authorized contractor may, in their discretion, publish or furnish to health researchers and the public, deidentified information including compilations and analyses thereof.

(4) The department and authorized contractor may furnish confidential information to other trauma registries, federal trauma programs, or health researchers in order to perform and collaborate with research studies. Persons and entities receiving confidential information for research purposes must comply with rules of the department relating to the confidentiality of trauma registry records and information.

(5) The department and authorized contractor may furnish confidential information relating to a specific licensed hospital, including compilations and analyses of such confidential information, to the specific licensed hospital to which it relates.

(6) Trauma registry records and information shall not be available for purposes of litigation except by order of the court. Any such order shall contain such protective provisions as are reasonable and necessary to prevent the public or further disclosure of the records and information and shall contain a provision requiring the destruction of the records and information when no longer needed for the litigation.

History.

I.C., § 57-2006, as added by 2002, ch. 329, § 2, p. 928.

STATUTORY NOTES

Compiler's Notes.

Section 4 of S.L. 2002, ch. 329 provides: “This act shall be in full force and effect on and after January 1, 2003, provided that for purposes of promulgation of rules as provided in section 57-2003, Idaho Code, this act shall be in full force and effect on and after July 1, 2002.”

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57-2007. Liability. — (1) No action for damages arising from the disclosure of confidential information may be maintained against any

reporting entities or employees of such entities that participate in good faith in the reporting of trauma registry data in accordance with this chapter.

(2) No license of a health care facility or health care practitioner may be denied, suspended or revoked for the good faith disclosure of confidential information in accordance with this chapter.

(3) The immunity granted in subsections (1) and (2) of this section shall not be construed to apply to the unauthorized disclosure of confidential information when such disclosure is due to gross negligence or willful misconduct of the reporting entities.

History.

I.C., § 57-2007, as added by 2002, ch. 329,
§ 2, p. 928.

STATUTORY NOTES**Compiler's Notes.**

Section 4 of S.L. 2002, ch. 329 provides: "This act shall be in full force and effect on and after January 1, 2003, provided that for purposes of promulgation of rules as provided in section 57-2003, Idaho Code, this act shall be in full force and effect on and after July 1, 2002."

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